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THE
COMPANIES ACTS
1862 - 1907

BY
WILLIAM GODDEN LL.B.
SOLICITOR
AND
STAMFORD HUTTON
BARRISTER-AT-LAW

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NORTH BRITISH — AND — MERCANTILE



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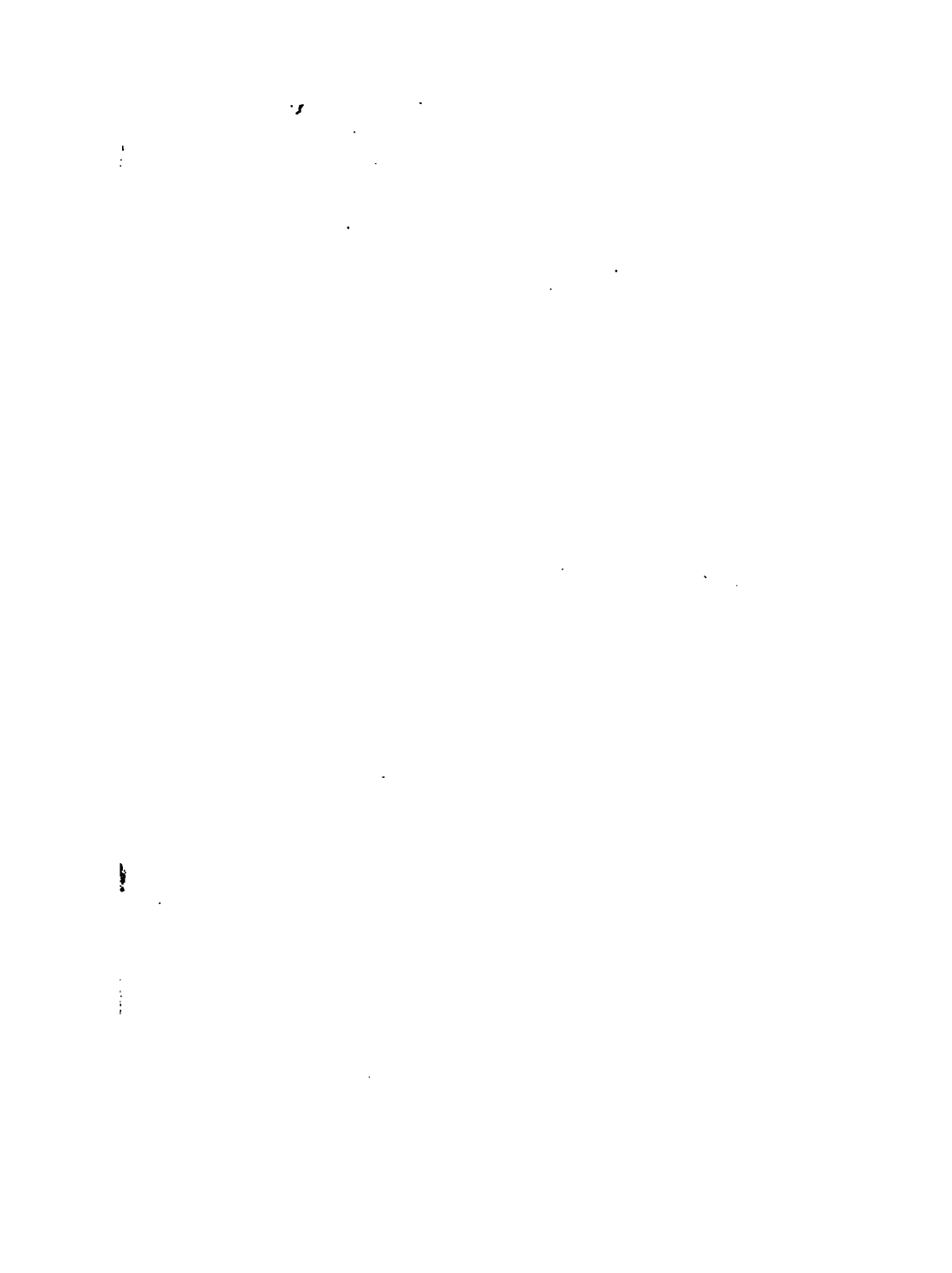
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THE COMPANIES ACTS
1862-1907

9th Brit. Laws, Statutes, etc.

THE
COMPANIES ACTS
1862-1907

WITH CROSS REFERENCES
AND
A FULL ANALYTICAL INDEX
COMPRISING THE FULL TEXT OF ALL THE STATUTES WITH ALL
AMENDMENTS AND REPEALS DOWN TO 1908, AND THE
FORMS AND FEES PRESCRIBED BY THE BOARD
OF TRADE UNDER THE ACTS

BY
WILLIAM GODDEN, LL.B., B.A.
SOLICITOR

AND
STAMFORD HUTTON, M.A. 1906
OF THE INNER TEMPLE AND THE OXFORD CIRCUIT,

~~BARRISTER-AT-LAW~~

LONDON

EFFINGHAM WILSON
54 THREADNEEDLE STREET, E.C.

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PREFACE TO FIRST EDITION.

THIS book contains all the Companies Acts, 1862 to 1900, applicable to England and Wales, together with the Forged Transfer Acts and the Forms and Fees prescribed by the Board of Trade for use under the Companies Act, 1900, and is intended to supply for ready reference the full text of the Statutes in a small compass together with a full index.

Sections which have been repealed or amended are distinguished accordingly, and where sections refer to or are affected by other sections cross references are added to facilitate reference to such other sections.

No other comment, annotation, or reference to judicial decisions has been added, as the object of the book is to reproduce all the existing Statute law on the subject in the most portable and handy form for use in the office and at meetings of directors or shareholders.

The analytical index has been made very full, and care has been taken to arrange the subject-matter under every heading under which search

appears likely to be made, in order that any particular portion of the Acts may be found as quickly and easily as possible.

The text of the Acts follows the Queen's Printers' copies, but the authorised marginal notes of the Revised Edition of the Statutes have been substituted for the original marginal notes, which in many cases were misleading.

W G.

S. H

PREFACE TO SECOND EDITION.

THE Companies Act, 1907, embodies the system of legislation by reference to an extent which has greatly aggravated the previously existing complications of company law.

The Act of 1900, in particular, has been so dealt with by means of repeal, substitution, incorporation and modification, that the statutory provisions applicable to a Limited Company vary according as the date of incorporation was (1) prior to 1901; (2) between 1900 and 1st July, 1908, and (3) after 30th June, 1908, while the latter class is subject to a further division into (i) public companies which do issue a prospectus; (ii) public companies which do not issue a prospectus; and (iii) private companies.

In the present edition which this fresh legislation has rendered necessary, an attempt has been made by means of distinguishing type, marginal notes and cross-references, to enable the provisions which apply to any particular class of company to be picked out from those which are not applicable.

The opportunity has also been taken to add Table A. (revised), the Winding-up Rules, the Preferential Payments in Bankruptcy Acts and certain sections of other Statutes referred to in the Companies Acts, together with such new Rules and Forms as have been issued since the publication of the first edition. The cross-references have been revised throughout, and the index amplified and rearranged.

W. G.

S. H.

May, 1908.

TABLE OF CONTENTS.

	PAGE
PREFACE	v
THE COMPANIES ACT, 1862	1
TABLE A. REVISED (BEING THE FIRST SCHEDULE TO THE	
COMPANIES ACT, 1862)	98
THE COMPANIES SEALS ACT, 1864	140
THE COMPANIES ACT, 1867	143
THE JOINT STOCK COMPANIES ARRANGEMENT ACT, 1870	159
THE COMPANIES ACT, 1877	160
THE COMPANIES ACT, 1879	163
THE COMPANIES ACT, 1880	168
THE COMPANIES (COLONIAL REGISTERS) ACT, 1883	172
THE COMPANIES (MEMORANDUM OF ASSOCIATION) ACT, 1890	175
THE COMPANIES (WINDING-UP) ACT, 1890	178
THE DIRECTORS LIABILITY ACT, 1890	204
THE FORGED TRANSFERS ACT, 1891	208
THE FORGED TRANSFERS ACT, 1892	211
THE COMPANIES (WINDING-UP) ACT, 1893	213
THE COMPANIES ACT, 1898	214
THE COMPANIES ACT, 1900	216
FORMS PRESCRIBED BY BOARD OF TRADE FOR USE UNDER	
THE COMPANIES ACT, 1900, WITH FEES PAYABLE ON	
FILING THEREOF	240
THE COMPANIES ACT, 1907	251

	PAGE
APPENDIX, CONTAINING—	
THE LARCENY ACT, 1861, SECTS. 82, 83, 84 . . .	295
THE BILLS OF SALE ACT, 1878, SECT. 4 . . .	295
THE PREFERENTIAL PAYMENTS IN BANKRUPTCY ACT, 1888.	297
THE INTERPRETATION ACT, 1889, SECT. 38 . . .	299
THE PREFERENTIAL PAYMENTS IN BANKRUPTCY AMEND- MENT ACT, 1897	300
THE WORKMEN'S COMPENSATION ACT, 1906, SECT. 5 .	301
THE COMPANIES (WINDING-UP) RULES	302
INDEX	351

THE COMPANIES ACT, 1862,

(25 & 26 VICTORIA, CHAPTER 89).

An Act for the Incorporation, Regulation, and Winding up of Trading Companies and other Associations.

Preliminary.

1. This Act may be cited for all Purposes as "The short Title Companies Act, 1862."

2. *Repealed by the Statute Law Revision Act, 1893.*

3. For the Purposes of this Act a Company that carries on the Business of Insurance in common with any other Business or Businesses shall be deemed to be an Insurance Company. Definition of Insurance Company.

4.¹ No Company, Association, or Partnership consisting of more than Ten Persons shall be formed, after the Commencement of this Act, for the Purpose of carrying on the Business of Banking, unless it is registered as a Company under this Act, or is formed in pursuance of some other Act of Parliament, or of Letters Patent: and no Company, Association, or Partnership consisting of more than Twenty Persons shall be formed, after the Commencement of this Act, for the Purpose of carrying on any other Business that has for its Object the Acquisition of Gain² by the Company, Association, or Partnership, or by the individual Members thereof, unless it is registered as a Company under this Act, or is formed in pursuance of some other Act of Parliament, or of Letters Patent, Prohibition of Partnerships exceeding certain Number.

or is a Company engaged in working Mines within and subject to the Jurisdiction of the Stannaries.

¹ Cf. The Limited Partnership Act, 1907, 7 Edw. VII., cap. 24.

² As to Associations not for profit, see Companies Act, 1867, Sect. 23, *post* p. 151.

of 5. This Act is divided into Nine Parts, relating to the following Subject Matters :

The First Part,—to the Constitution and Incorporation of Companies and Associations under this Act :

The Second Part,—to the Distribution of the Capital and Liability of Members of Companies and Associations under this Act :

The Third Part,—to the Management and Administration of Companies and Associations under this Act :

The Fourth Part,—to the winding up of Companies and Associations under this Act :

The Fifth Part,—to the Registration Office :

The Sixth Part,—to Application of this Act to Companies registered under the Joint Stock Companies Acts :

The Seventh Part,—to Companies authorized to register under this Act :

The Eighth Part,—to Application of this Act to unregistered Companies :

The Ninth Part,—to repeal of Acts, and temporary Provisions.

PART I.

CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Memorandum of Association.

6. Any Seven¹ or more Persons¹ associated for any lawful Purpose may, by subscribing their Names to a Memorandum of Association, and otherwise complying with the Requisitions of this Act in respect of Regis-

tration,² form an incorporated Company,³ with or without limited Liability.

¹ Or, in the case of a private Company, two to fifty persons, Companies Act, 1907, Sect. 37, *post* p. 281.

² As to Registration, *see* Sect. 17, *post* p. 8.

³ As to Incorporation, *see* Sect. 18, *post* p. 8.

7. The Liability of the Members of a Company formed under this Act may, according to the Memorandum of Association, be limited either to the Amount, if any, unpaid on the Shares respectively held by them, or to such Amount as the Members may respectively undertake by the Memorandum of Association to contribute to the Assets of the Company in the event of its being wound up.

Mode of
limiting
Liability of
Members.

8. Where a Company is formed on the Principle of having the Liability of its Members limited to the Amount unpaid on their Shares, herein-after referred to as a Company limited by Shares, the Memorandum of Association shall contain the following Things; (that is to say,)

Memo-
randum of
Association
of a Com-
pany
limited by
Shares.

- (1.) The Name of the proposed Company, with the Addition of the Word "Limited"¹ as the last Word in such Name:
- (2.) The Part of the United Kingdom, whether *England, Scotland, or Ireland*, in which the Registered Office² of the Company is proposed to be situate:
- (3.) The Objects³ for which the proposed Company is to be established:
- (4.) A Declaration that the Liability of the Members is limited:
- (5.) The Amount of Capital with which the Company proposes to be registered divided into Shares of a certain fixed Amount:

Subject to the following Regulations:

- (1.) That no Subscriber shall take less than One Share:
- (2.) That each Subscriber of the Memorandum of Association shall write opposite to his Name the Number of Shares he takes.

¹ Except in the case of Associations not for profit, Companies Act, 1867, Sect. 23, *post* p. 151; and as to penalty for improper use of word "Limited," *see* Companies Act, 1907, Sect. 48, *post* p. 285.

² As to Registered Office, *see* Sect. 39, *post* p. 18.

³ As to Alteration of Objects, *see* the Companies (Memorandum of Association) Act, 1890, *post* p. 175.

Memorandum of Association of a Company limited by Guarantee.

9. Where a Company is formed on the Principle of having the Liability of its Members limited to such Amount as the Members respectively undertake to contribute to the Assets of the Company in the event of the same being wound up, herein-after referred to as a Company limited by Guarantee, the Memorandum of Association shall contain the following Things; (that is to say,)

- (1.) The Name of the proposed Company, with the Addition of the Word "Limited"¹ as the last Word in such Name :
- (2.) The part of the United Kingdom, whether *England*, *Scotland*, or *Ireland*, in which the Registered Office² of the Company is proposed to be situate :
- (3.) The Objects³ for which the proposed Company is to be established :
- (4.) A Declaration that each Member undertakes to contribute to the Assets of the Company, in the event of the same being wound up, during the Time that he is a Member, or within One Year afterwards, for Payment of the Debts and Liabilities of the Company contracted before the Time at which he ceases to be a Member, and of the Costs, Charges, and Expenses of winding up the Company, and for the Adjustment of the Rights of the Contributories amongst themselves, such Amount as may be required, not exceeding a specified Amount.

¹ Except in the case of Associations not for profit, Companies Act, 1867, Sect. 23, *post* p. 151 ; and as to penalty for improper use of word "Limited," *see* the Companies Act, 1907, Sect. 48, *post* p. 285.

² As to Registered Office, *see* Sect. 39, *post* p. 18.

³ As to Alteration of Objects, *see* the Companies (Memorandum of Association) Act, 1890, *post* p. 175.

Memorandum of Association of an Unlimited Company.

10. Where a Company is formed on the Principle of having no Limit placed on the Liability of its Members, herein-after referred to as an Unlimited Company, the Memorandum of Association shall contain the following Things; (that is to say,)

- (1.) The Name of the proposed Company :
- (2.) The Part of the United Kingdom, whether *England*, *Scotland*, or *Ireland*, in which the

Registered Office¹ of the Company is proposed to be situate :

(3.) The Objects for which the proposed Company is to be established.

¹ As to Registered Office, *see* Sect. 39, *post* p. 18.

11. The Memorandum of Association shall bear the same Stamp as if it were a Deed, and shall be signed by each Subscriber in the Presence of, and be attested by, One Witness at the least, and that Attestation shall be sufficient Attestation in *Scotland* as well as in *England* and *Ireland* : It shall, when registered,¹ bind the Company and the Members thereof to the same Extent as if each Member had subscribed his Name and affixed his Seal thereto, and there were in the Memorandum contained, on the Part of himself, his Heirs, Executors, and Administrators, a Covenant to observe all the Conditions of such Memorandum, subject to the Provisions of this Act.

Stamp,
Signature,
and Effect
of Memo-
randum of
Association.

¹ As to Registration, *see* Sects. 17 and 18, *post* p. 8.

12. Any Company limited by Shares may so far modify the Conditions contained in its Memorandum of Association, if authorized to do so by its Regulations as originally framed, or as altered by special Resolution in manner herein-after mentioned,¹ as to increase its Capital by the Issue of new Shares of such Amount as it thinks expedient, or to consolidate and divide its Capital into Shares of larger Amount than its existing Shares, or to convert its paid-up Shares² into Stock,³ but, save as aforesaid, and save as is herein-after provided⁴ in the Case of a Change of Name, no Alteration⁵ shall be made by any Company in the Conditions contained in its Memorandum of Association.

Power of
certain
Companies
to alter
Memoran-
dum of
Association.

No Altera-
tions there-
in save as
herein
mentioned.

¹ Sects. 50 and 51, *post* pp. 22, 23.

² As to effect of such Conversion, *see* Sect. 29, *post* p. 13.

³ Or to re-convert Stock into paid-up shares, the Companies Act, 1900, Sect. 29, *post* p. 238.

⁴ *I.e.*, in Sects. 13 and 20, *post* pp. 6 and 9.

⁵ *See*, however, the Companies (Memorandum of Association) Act, 1890, *post* p. 175, as to Change in Objects or Constitution, and the Companies Act, 1907, Sect. 39, *post* p. 232, as to Reorganisation of Capital.

Power of
Companies
to change
Name.

13. Any Company under this Act, with the Sanction of a special Resolution of the Company passed in manner herein-after mentioned,¹ and with the Approval of the Board of Trade testified in Writing under the Hand of One of its Secretaries or Assistant Secretaries, may change its Name, and upon such Change being made the Registrar shall enter the new Name on the Register in the Place of the former Name, and shall issue a Certificate of Incorporation² altered to meet the Circumstances of the Case; but no such Alteration of Name shall affect any Rights or Obligations of the Company, or render defective any legal Proceedings instituted or to be instituted by or against the Company, and any legal Proceedings may be continued or commenced against the Company by its new Name that might have been continued or commenced against the Company by its former Name.

¹ Sect. 51, *post* p. 23.

² The Companies Act, 1900, Sect. 1 (1), *post* p. 216.

Articles of Association.

Regulations
to be pre-
scribed by
Articles of
Association.

14. The Memorandum of Association may, in the Case of a Company limited by Shares, and shall, in the Case of a Company limited by Guarantee¹ or unlimited, be accompanied, when registered by Articles of Association signed by the Subscribers to the Memorandum of Association, and prescribing such Regulations for the Company as the Subscribers to the Memorandum of Association deem expedient: The Articles shall be expressed in separate Paragraphs, numbered arithmetically: They may adopt all or any of the Provisions contained in the Table² marked A. in the First Schedule hereto: They shall, in the Case of a Company, whether limited by Guarantee or unlimited, that has a Capital divided into Shares, state the Amount of Capital with which the Company proposes to be registered; and in the Case of a Company, whether limited by Guarantee or unlimited, that has not a Capital divided into Shares, state the

Number of Members with which the Company proposes to be registered, for the Purpose of enabling the Registrar to determine the Fees payable on Registration : In a Company limited by Guarantee or unlimited, and having a Capital divided into Shares, each Subscriber shall take One Share at the least, and shall write opposite to his Name in the Memorandum of Association the Number of Shares he takes.

¹ See also the Companies Act, 1900, Sect. 27, *post* p. 235.

² Now Table A., revised, *post* p. 93.

15. In the Case of a Company limited by Shares, if the Memorandum of Association is not accompanied by Articles of Association, or in so far as the Articles do not exclude or modify the Regulations contained in the Table¹ marked A. in the First Schedule hereto, the last-mentioned Regulations shall, so far as the same are applicable, be deemed to be the Regulations of the Company in the same Manner and to the same Extent as if they had been inserted in Articles of Association, and the Articles had been duly registered.

¹ Now Table A., revised, *post* p. 93.

16. The Articles of Association shall be printed, they shall bear the same Stamp as if they were contained in a Deed, and shall be signed by each Subscriber in the Presence of, and be attested by, One Witness at the least, and such Attestation shall be a sufficient Attestation in *Scotland* as well as in *England* and *Ireland* : When registered, they shall bind the Company and the Members thereof to the same Extent as if each Member had subscribed his Name and affixed his Seal thereto, and there were in such Articles contained a Covenant on the Part of himself, his Heirs, Executors, and Administrators to conform to all the Regulations contained in such Articles, subject to the provisions of this Act ; and all Monies payable by any Member to the Company, in Pursuance of the Conditions and Regulations of the Company, or any of such Conditions or Regulations, shall be deemed to be a Debt due from such Member to the Company, and in *England* and *Ireland* to be in the Nature of a Specialty Debt.

Stamp, Signature, and Effect of Articles of Association.

General Provisions.

17. The Memorandum of Association and the Articles of Association, if any, shall be delivered to the Registrar of Joint Stock Companies herein-after mentioned, who shall retain and register the same: There shall be paid to the Registrar by a Company having a Capital divided into Shares, in respect of the several Matters mentioned in the Table¹ marked B. in the First Schedule hereto, the several Fees therein specified or such smaller Fees as the Board of Trade may from Time to Time direct; and by a Company not having a Capital divided into Shares, in respect of the several Matters mentioned in the Table² marked C in the First Schedule hereto, the Several Fees therein specified or such smaller Fees as the Board of Trade may from Time to Time direct: All Fees paid to the said Registrar in pursuance of this Act shall be paid into the Receipt of Her Majesty's Exchequer,³ and be carried to the Account of the Consolidated Fund of the United Kingdom of *Great Britain and Ireland*.

¹ *Post* p. 121.² *Post* p. 122.³ And collected by impressed stamps, *post* p. 240 n.

18. Upon the Registration of the Memorandum of Association, and of the Articles of Association in cases where Articles of Association are required¹ by this Act or by the Desire of the Parties to be registered, the Registrar shall certify under his Hand that the Company is incorporated, and in the Case of a Limited Company that the Company is limited: The Subscribers of the Memorandum of Association, together with such other Persons as may from Time to Time become Members of the Company, shall thereupon² be a Body Corporate by the Name contained in the Memorandum of Association, capable forthwith of exercising all the Functions of an Incorporated Company, and having perpetual Succession and a Common Seal³ with Power to hold Lands,⁴ but with such Liability on the Part of the Members to contribute to the Assets of the Company in the event of the same being wound up as is herein-after mentioned:⁵ [A Certificate of the Incorporation of any Company given by the Registrar

shall be conclusive Evidence that all the Requisitions of this Act in respect of Registration have been complied with.⁶]

¹ *I.e.*, when Company is limited by guarantee or unlimited, Sect. 14, *ante* p. 6.

² *I.e.*, from the date stated in the Certificate of Incorporation, Companies Act, 1900, Sect. 1 (3), *post* p. 216.

³ As to Seal for use in foreign countries, *see* the Companies Seals Act, 1864, *post* p. 140.

⁴ Unless Company be one not formed for acquisition of gain, as to which *see* Sect. 21, *post* p. 10.

⁵ Sect. 38, *post* p. 17.

⁶ *Repealed and re-enacted by the Companies Act, 1900, Sect. 1 (1), post* p. 216.

19. A Copy of the Memorandum of Association, having annexed thereto the Articles of Association, if any, shall be forwarded to every Member, at his Request, on Payment of the Sum of One Shilling or such less Sum as may be prescribed by the Company for each Copy; and if any Company makes Default in forwarding a Copy of the Memorandum of Association and Articles of Association, if any, to a Member, in pursuance of this Section, the Company so making Default shall for each Offence incur a Penalty not exceeding One Pound.

Copies of Memorandum and Articles to be given to Members.

20. No Company shall be registered under a Name identical with that by which a subsisting Company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting Company is in the course of being dissolved and testifies its Consent in such Manner as the Registrar requires; and if any Company, through Inadvertence or otherwise, is, without such Consent as aforesaid, registered by a Name identical with that by which a subsisting Company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned Company may, with the Sanction of the Registrar, change its Name, and upon such Change being made the Registrar shall enter the new Name on the Register in the Place of the former Name, and shall issue a Certificate of Incorporation altered to meet the Circumstances of the Case; but no such Alteration of Name shall affect any Rights or Obligations of the Company, or render defective any legal Proceedings instituted or to be instituted by or against the Com-

Prohibition against Identity of Names in Companies.

pany, and any legal Proceedings may be continued or commenced against the Company by its new Name that might have been continued or commenced against the Company by its former Name.

Prohibition
against cer-
tain Com-
panies hold-
ing Land.

21. No Company formed for the Purpose of promoting Art, Science, Religion, Charity, or any other like Object,¹ not involving the Acquisition of Gain by the Company or by the individual Members thereof, shall, without the Sanction² of the Board of Trade, hold more than Two Acres of Land; but the Board of Trade may, by License under the Hand of One of their Principal³ Secretaries or Assistant Secretaries, empower any such Company to hold Lands in such Quantity and subject to such Conditions as they think fit.

¹ As to such Companies, *see* Companies Act, 1867, Sect. 23, *post* p. 151.

² Form F., Schedule 2, *post* p. 136.

³ Or of someone authorised by the President of the Board of Trade, Companies Act, 1907, Sect. 46, *post* p. 284.

PART II.

DISTRIBUTION OF CAPITAL AND LIABILITY OF MEMBERS OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Distribution of Capital.

Nature of
Interest in
Company.

22. The Shares or other Interest of any Member in a Company under this Act shall be Personal Estate, capable of being transferred¹ in manner provided by the Regulations of the Company, and shall not be of the Nature of Real Estate, and each Share shall, in the Case of a Company having a Capital divided into Shares, be distinguished by its appropriate Number.²

Shares to be
Numbered.

¹ As to Registration of Transfer, *see* Sect. 35, *post* p. 15, and Companies Act, 1867, Sect. 26, *post* p. 151.

² *I.e.*, in the Register, Sect. 25 (1), *post* p. 11.

Defini-
tion of
"Member."

23. The Subscribers of the Memorandum of Association of any Company under this Act shall be deemed to have agreed to become Members of the Company whose Memorandum they have subscribed, and upon the Registration of the Company shall be entered as Members

on the Register of Members herein-after mentioned;¹ and every other Person who has agreed to become a Member of a Company under this Act, and whose Name is entered on the Register of Members, shall be deemed to be a Member of the Company.

¹ Sect. 25, *infra*.

24. Any Transfer of the Share or other Interest of a deceased Member of a Company under this Act,¹ made by his Personal Representative, shall, notwithstanding such Personal Representative may not himself be a Member, be of the same Validity as if he had been a Member at the Time of the Execution of the Instrument of Transfer.

Transfer by
Personal
Representative.

¹ Sect. 22, *ante* p. 10.

25. Every Company under this Act shall cause to be kept in One or more Books a Register of its Members, and there shall be entered therein the following Particulars :

Register of
Members.

- (1.) The Names and Addresses, and the Occupations, if any, of the Members of the Company, with the Addition, in the Case of a Company having a Capital divided into Shares, of a Statement of the Shares¹ held by each Member, distinguishing each Share by its Number; And of the Amount paid or agreed to be considered as paid on the Shares of each Member :
- (2.) The Date at which the Name of any Person was entered in the Register as a Member :
- (3.) The date at which any Person ceased to be a Member :

And any Company acting in contravention of this Section shall incur a Penalty² not exceeding Five Pounds for every Day during which its Default in complying with the Provisions of this Section continues, and every Director or Manager of the Company who shall knowingly and wilfully authorize or permit such Contravention shall incur the like Penalty.³

¹ Where Shares have been converted into Stock, *see* Sect. 29, *post* p. 13. Where Share Warrants have been issued, *see* the Companies Act, 1867, Sect. 31, *post* p. 154.

² Recoverable summarily, Companies Act, 1907, Sect. 49, *post* p. 285.

Annual List
of Members.

26. Every Company under this Act,¹ and having a Capital* divided into Shares, shall make, once at least in every Year, a List of all Persons who, on the Fourteenth Day succeeding the Day on which the Ordinary General Meeting,² or if there is more than One Ordinary Meeting in each Year, the First of such Ordinary General Meetings is held, are Members of the Company; and such List shall state the Names, Addresses, and Occupations of all the Members therein mentioned, and the Number of Shares held by each of them, and shall contain a Summary³ specifying the following Particulars:⁴

- (1.) The Amount of the Capital of the Company, and the Number of Shares into which it is divided:
- (2.) The Number of Shares taken from the Commencement of the Company up to the date of the Summary:
- (3.) The Amount of Calls made on each Share:
- (4.) The total Amount of Calls received:
- (5.) The total Amount of Calls unpaid:
- (6.) The total Amount of Shares forfeited:
- (7.) The Names, Addresses, and Occupations of the Persons who have ceased to be Members since the last List was made, and the Number of Shares held by each of them.

The above List and Summary shall be contained in a separate Part of the Register, and shall be completed within Seven Days after such Fourteenth Day as is mentioned in this Section, and a Copy shall forthwith be forwarded to the Registrar of Joint Stock Companies.

¹ And also Companies established outside, but trading within, the United Kingdom, Companies Act, 1907, Sect. 35 (3), *post* p. 279.

* *See* Companies Act, 1900, Sect. 12 (5), *post* p. 228, as to similar list at the Statutory Meeting.

² Sect. 49, *post* p. 22.

³ Schedule 2, Form E., *post* p. 133, as enlarged by the Companies Act, 1907, Sect. 21, *post* p. 272.

⁴ Where Shares have been converted into Stock, *see* Sect. 29, *post* p. 13. Where Share Warrants have been issued, *see* the Companies Act, 1867, Sect. 32, *post* p. 155. Where a reduction of Capital has taken place, *see* the Companies Act, 1860, Sect. 6, *post* p. 169, and for further requirements, *see* the Companies Act, 1900, Sect. 19, *post* p. 234, and the Companies Act, 1907, which adds to the particulars required the amount of Commission paid (Sect. 7, *post* p. 257) and (except in the case of private Companies) a balance-sheet (Sect. 21, *post* p. 272).

27. If any Company under this Act, and having a Capital divided into Shares, makes default in complying with the Provisions of this Act with respect to forwarding such List of Members or Summary as is herein-before mentioned¹ to the Registrar, such Company shall incur a Penalty² not exceeding Five Pounds for every Day during which such Default continues, and every Director and Manager of the Company who shall knowingly and wilfully authorize or permit such Default shall incur the like Penalty.

Penalty on Company, etc., not forwarding List of Members, etc., to Registrar

¹ In the previous Sect.

² Recoverable summarily, Companies Act, 1907, Sect. 49, *post* p. 285.

28. Every Company under this Act, having a Capital divided into Shares, that has consolidated¹ and divided its Capital into Shares of larger Amount than its existing Shares, or converted any Portion of its Capital into Stock [or re-converted Stock into Shares²] shall give Notice to the Registrar of Joint Stock Companies of such Consolidation, Division, or Conversion [or re-conversion²], specifying the Shares so consolidated, divided, or converted [or the Stock re-converted²].

¹ As empowered to do by Sect. 12, *ante* p. 5; power to re-convert was given by the Companies Act, 1900, Sect. 29, *post* p. 238.

² The words in brackets were inserted by the Companies Act, 1907, Sect. 50, and 3rd Schedule, *post* pp. 284 and 290.

29. Where any Company under this Act, and having a Capital divided into shares, has converted¹ any Portion of its Capital into Stock, and given Notice² of such Conversion to the Registrar, all the Provisions of this Act which are applicable to Shares only shall cease as to so much of the Capital as is converted into Stock; and the Register of Members hereby required³ to be kept by the Company, and the List of Members⁴ to be forwarded to the Registrar, shall show the Amount of Stock held by each Member in the List instead of the Amount of Shares and the Particulars relating to Shares herein-before required.⁴

Effect of Conversion of Shares into Stock.

¹ As empowered to do by Sect. 12, *ante* p. 5.

² As required in preceding Section.

³ Sect. 25, *ante* p. 11.

⁴ Sect. 26, *ante* p. 12.

30. No Notice of any Trust, expressed, implied, or constructive, shall be entered on the Register, or be receivable by the Registrar, in the Case of Com-

No Entry of Trusts on Register.

panies under this Act and registered in *England* or *Ireland*.

31. A Certificate,¹ under the Common Seal of the Company, specifying any Share or Shares or Stock held by any Member of a Company, shall be *prima facie* Evidence of the Title of the Member to the Share or Shares or Stock therein specified.

¹ As to time within which this must be issued, *see* the Companies Act, 1907, Sect. 5 (1), *post* p. 256; as to certificates generally, *see* Table A., revised, *post* pp. 94, 95.

pection
Register.

32. The Register¹ of Members, commencing from the Date of the Registration of the Company, shall be kept at the Registered Office of the Company herein-after mentioned : ² Except when closed as herein-after mentioned,³ it shall during Business Hours, but subject to such reasonable Restrictions as the Company in General Meeting may impose, so that not less than Two Hours in each Day be appointed for Inspection, be open to the Inspection of any Member gratis, and to the Inspection of any other Person on the Payment of One Shilling, or such less Sum as the Company may prescribe, for each Inspection ; and every such Member or other Person may require a Copy of such Register, or of any Part thereof, or of such List or Summary of Members as is herein-before mentioned [or any part thereof⁴], on Payment of Sixpence [or such less Sum as the Company may prescribe⁴] for every Hundred Words [or fractional part thereof⁴] required to be copied : If such Inspection or Copy is refused, the Company shall incur for each Refusal a Penalty not exceeding Two Pounds, and a further Penalty not exceeding Two Pounds for every Day during which such Refusal continues, and every Director and Manager of the Company who shall knowingly authorize or permit such Refusal shall incur the like Penalty ; and in addition to the above Penalty, as respects Companies registered in *England* and *Ireland*, any Judge sitting in Chambers, or the Vice Warden of the Stannaries, in the Case of Companies subject to his Jurisdiction, may by Order compel an immediate Inspection of the Register.

¹ Sect. 25, *ante* p. 11. ² Sect. 39, *post* p. 18. ³ Sect. 33, *infra*.

⁴ The words in brackets were inserted by the Companies Act, 1907, Sect. 50, and 3rd Schedule, *post* pp. 285 and 290.

33. Any Company under this Act may, upon giving Notice by Advertisement in some Newspaper circu-

lating in the District in which the Registered Office of the Company is situated, close the Register of Members for any Time or Times not exceeding in the whole Thirty Days in each Year.

34. Where a Company has a Capital divided into Shares, whether such Shares may or may not have been converted into Stock, Notice of any Increase in such Capital beyond the registered Capital, and where a Company has not a Capital divided into Shares, Notice of any Increase in the Number of Members beyond the registered Number, shall be given to the Registrar in the Case of an Increase of Capital, within Fifteen Days from the Date of the passing of the Resolution by which such Increase has been authorized, and in the Case of an Increase of Members within Fifteen Days from the Time at which such Increase of Members has been resolved on or has taken place, and the Registrar shall forthwith record the Amount of such Increase of Capital or Members: If such Notice is not given within the Period aforesaid the Company in default shall incur a Penalty¹ not exceeding Five Pounds for every Day during which such Neglect to give Notice continues, and every Director and Manager of the Company who shall knowingly and wilfully authorize or permit such Default shall incur the like Penalty.¹

Notice of Increase of Capital and of Members to be given to Registrar.

¹ Recoverable summarily, Companies Act, 1907, Sect. 49 *post* p. 285.

35. If the Name of any Person is, without sufficient Cause, entered in or omitted from the Register of Members of any Company under this Act, or if Default is made or unnecessary Delay takes place in entering on the Register the Fact of any Person having ceased to be a Member of the Company, the Person or Member aggrieved, or any Member of the Company, or the Company itself, may, as respects Companies registered in *England* or *Ireland*, by Motion in any of Her Majesty's Superior Courts of Law or Equity, or by Application to a Judge sitting in Chambers, or to the Vice Warden of the Stannaries in the Case of Companies subject to his Jurisdiction, and as respects Companies registered in *Scotland* by summary Petition

Remedy for improper Entry or Omission of Entry in Register.

to the Court of Sessions, or in such other Manner as the said Courts may direct, apply for an Order of the Court that the Register may be rectified; and the Court¹ may either refuse such Application, with or without Costs, to be paid by the Applicant, or it may, if satisfied of the Justice of the Case, make an Order for the Rectification of the Register, and may direct the Company to pay all the Costs of such Motion, Application, or Petition, and any Damages the Party aggrieved may have sustained: The Court may in any Proceeding under this Section decide on any Question relating to the Title of any Person who is a Party to such Proceeding to have his Name entered in or omitted from the Register, whether such Question arises between Two or more Members or alleged Members, or between any Members or alleged Members, and the Company, and generally the Court may in any such Proceeding decide any Question that it may be necessary or expedient to decide for the Rectification of the Register; provided that the Court, [if a Court of Common Law,²] may direct an Issue to be tried, in which any Question of Law may be raised, [and a Writ of Error or Appeal, in the Manner directed by "The Common Law Procedure Act, 1854," shall lie²].

¹ This jurisdiction is specially preserved by the Companies Act, 1898, Sect. 2, *post* p. 215.

² Repealed by the Statute Law Revision Act, 1881.

Notice to
Registrar of
Rectifica-
tion of
Register.

36. Whenever any Order has been made rectifying the Register, in the Case of a Company hereby required to send a List of its Members to the Registrar, the Court shall, by its Order, direct that due Notice of such Rectification be given to the Registrar.

Register to
be Evidence.

37. The Register of Members shall be *prima facie* Evidence of any Matters by this Act¹ directed or authorized to be inserted therein.

¹ Sect. 25, *ante* p. 11.

Liability of Members.

38.¹ In the event of a Company formed under this Act being wound up, every present and past Member of such Company shall be liable to contribute to the Assets of the Company to an Amount sufficient for Payment of the Debts and Liabilities of the Company, and the Costs, Charges, and Expenses of the Winding up, and for the Payment of such Sums as may be required for the Adjustment of the Rights of the Contributories amongst themselves, with the Qualifications following; (that is to say,)

Liability
of present
and past
Members of
Company.

- (1.) No past Member shall be liable to contribute to the Assets of the Company if he has ceased to be a Member for a Period of One Year or upwards prior to the Commencement of the Winding up:²
- (2.) No past Member shall be liable to contribute in respect of any Debt or Liability of the Company contracted after the Time at which he ceased to be a Member:
- (3.) No past Member shall be liable to contribute to the Assets of the Company unless it appears to the Court that the existing Members are unable to satisfy the Contributions required to be made by them in pursuance of this Act:
- (4.) In the Case of a Company limited by Shares, no Contribution shall be required from any Member exceeding the Amount, if any, unpaid on the Shares in respect of which he is liable as a present or past Member:
- (5.) In the Case of a Company limited by Guarantee, no Contribution shall be required from any Member exceeding the Amount of the Undertaking entered into on his Behalf by the Memorandum of Association:
- (6.) Nothing in this Act contained shall invalidate any Provision contained in any Policy of Insurance or other Contract whereby the Liability of Individual Members upon any such Policy

or Contract is restricted, or whereby the Funds of the Company are alone made liable in respect of such Policy or Contract :

- (7.) No Sum due to any Member of a Company, in his Character of a Member, by way of Dividends, Profits, or otherwise, shall be deemed to be a Debt of the Company, payable to such Member in a Case of Competition between himself and any other Creditor not being a Member of the Company; but any such Sum may be taken into account, for the Purposes of the final Adjustment³ of the Rights of the Contributories amongst themselves.

¹ Modified as to Directors or Managers with Unlimited Liability by the Companies Act, 1867, Sect. 5, *post* p. 144.

² As to Commencement of Winding-up, if by the Court, *see* Sect. 84, *post* p. 37; if voluntary, *see* Sect. 120, *post* p. 54.

³ Sect. 109, *post* p. 46.

PART III.

MANAGEMENT AND ADMINISTRATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Provisions for Protection of Creditors.

Registered
Office of
Company.

39. Every Company under this Act shall have a Registered Office to which all Communications and Notices may be addressed: If any Company under this Act carries on Business without having such an Office, it shall incur a Penalty not exceeding Five Pounds for every Day during which Business is so carried on.

Notice of
Situation of
Registered
Office.

40. Notice of the Situation of such Registered Office, and of any Change therein, shall be given to the Registrar, and recorded by him: Until such Notice is given the Company shall not be deemed to have complied with the Provisions of this Act with respect to having a Registered Office.

41. Every Limited Company under this Act,¹ whether limited by Shares or by Guarantee, shall paint or affix, and shall keep painted or affixed, its Name on the Outside of every Office or Place in which the Business of the Company is carried on, in a conspicuous Position, in Letters easily legible, and shall have its Name engraven in legible Characters on its Seal, and shall have its Name mentioned in legible Characters in all Notices, Advertisements, and other official Publications of such Company, and in all Bills of Exchange, Promissory Notes, Endorsements, Cheques, and Orders for Money or Goods purporting to be signed by or on behalf of such Company, and in all Bills of Parcels, Invoices, Receipts, and Letters of Credit of the Company.

Publication
of Name by
a Limited
Company.

¹ As to Limited Companies established outside, but trading within the United Kingdom, *see* the Companies Act, 1907, Sect. 35 (4, 6), *post* p. 280.

42. If any Limited Company under this Act does not paint or affix, and keep painted or affixed, its Name in manner directed by this Act, it shall be liable to a Penalty¹ not exceeding Five Pounds for not so painting or affixing its Name, and for every Day during which such Name is not so kept painted or affixed, and every Director and Manager of the Company who shall knowingly and wilfully authorize or permit such Default shall be liable to the like Penalty;¹ and if any Director, Manager, or Officer of such Company, or any Person on its Behalf, uses or authorizes the use of any Seal purporting to be a Seal of the Company whereon its Name is not so engraven as aforesaid, or issues or authorizes the Issue of any Notice, Advertisement, or other official Publication of such Company, or signs or authorizes to be signed on behalf of such Company any Bill of Exchange, Promissory Note, Endorsement, Cheque, Order for Money or Goods, or issues or authorizes to be issued any Bill of Parcels, Invoice, Receipt, or Letter of Credit of the Company, wherein its Name is not mentioned in Manner aforesaid, he shall be liable to a Penalty¹ of Fifty Pounds, and shall further be personally liable to the Holder of any such Bill of Exchange, Promissory Note, Cheque, or Order for Money or Goods, for the Amount thereof, unless the same is duly paid by the Company.

Penalties
on Non-
publication
of Name.

¹ Recoverable summarily, Companies Act, 1907, Sect. 49, *post* p. 285.

Register of
Mortgages.

Inspection
of Register.

Certain
Companies
to publish
Statement
in Form D.
in Schedule.

43.¹ Every Limited Company under this Act shall keep a Register of all Mortgages and Charges specifically affecting Property of the Company, and shall enter in such Register in respect of each Mortgage or Charge a short Description of the Property mortgaged or charged, the Amount of Charge created, and the Names of the Mortgagees or Persons entitled to such Charge: If any Property of the Company is mortgaged or charged without such Entry as aforesaid being made, every Director, Manager, or other Officer of the Company who knowingly and wilfully authorizes or permits the Omission of such Entry shall incur a Penalty² not exceeding Fifty Pounds: The Register of Mortgages required by this Section shall be open to Inspection by any Creditor or Member of the Company at all reasonable Times,³ and if such Inspection is refused, any Officer of the Company refusing the same, and every Director and Manager of the Company authorizing or knowingly and wilfully permitting such Refusal, shall incur a Penalty² not exceeding Five Pounds, and a further Penalty² not exceeding Two Pounds for every Day during which such Refusal continues; and in addition to the above Penalty, as respects Companies registered in *England* and *Ireland*, any Judge sitting in Chambers, or the Vice Warden of the Stannaries in the Case of Companies subject to his Jurisdiction, may by Order compel an immediate Inspection of the Register.

¹ Extended to copies of Charges, etc., under Sect. 10 of Companies Act, 1907, by Sub-sect. 8 thereof, *post* p. 264, and *see also* the Companies Act, 1900, Sects. 15 to 18, *post* pp. 232, 233.

² Recoverable summarily, Companies Act, 1907, Sect. 49, *post* p. 285.

³ As to Inspection by other persons, *see* Companies Act, 1907, Sect. 17, *post* p. 269.

44. Every Limited Banking Company and every Insurance Company, and Deposit, Provident, or Benefit Society under this Act shall, before it commences Business, and also on the First *Monday* in *February* and the First *Monday* in *August* in every Year during which it carries on Business, make a Statement in the Form marked D. in the First Schedule hereto, or as near thereto as Circumstances will admit, and a Copy of such Statement shall be put up in a conspicuous Place in the Registered Office of the Company, and in

every Branch Office or Place where the Business of the Company is carried on, and if Default is made in compliance with the Provisions of this Section the Company shall be liable to a Penalty² not exceeding Five Pounds for every Day during which such Default continues, and every Director and Manager of the Company who shall knowingly and wilfully authorize or permit such Default shall incur the like Penalty.²

Every Member and every Creditor of any Company mentioned in this Section shall be entitled to a Copy of the above-mentioned Statement on Payment of a sum not exceeding Sixpence.

¹ Defined in Sect. 3, *ante* p. 1; Life Assurance are excepted if they have complied with certain provisions of the Life Assurance Companies Acts. Companies Act, 1907, Sect. 40, *post* p. 282. List of Directors to be kept and sent to Registrar.

² Recoverable summarily, Companies Act, 1907, Sect. 49, *post* p. 285.

45. Every Company under this Act,¹ [and not having a Capital divided into Shares²], shall keep at its Registered Office a Register containing the Names and Addresses and the Occupations of its Directors or Managers, and shall send to the Registrar of Joint Stock Companies a Copy of such Register, and shall from Time to Time notify to the Registrar any Change that takes place in such Directors or Managers.

¹ Except those Registered under The Companies Act, 1867, Sect. 23, *post* p. 151. As to Companies established outside, but trading within the United Kingdom, *see* Companies Act, 1907, Sect. 35, *post* pp. 279, 280.

² Repealed by the Companies Act, 1900, *post* p. 240.

46. If any Company under this Act, [and not having a Capital divided into Shares¹], makes Default in keeping a Register of its Directors or Managers, or in sending a Copy of such Register to the Registrar in compliance with the foregoing Rules, or in notifying to the Registrar any Change that takes place in such Directors or Managers, such delinquent Company shall incur a Penalty² not exceeding Five Pounds for every Day during which such Default continues, and every Director and Manager of the Company who shall knowingly and wilfully authorize or permit such Default shall incur the like Penalty.² Penalty on Company not keeping or sending Register of Directors, etc.

¹ Repealed by the Companies Act, 1900, *post* p. 240.

² Recoverable summarily, Companies Act, 1907, Sect. 49, *post* p. 285.

47. A Promissory Note or Bill of Exchange shall be deemed to have been made, accepted, or endorsed on behalf of any Company under this Act, if made, Promissory Notes and Bills of Exchange

accepted, or endorsed in the Name of the Company by any Person acting under the Authority of the Company, or if made, accepted, or endorsed by or on behalf or on account of the Company by any Person acting under the Authority of the Company.

Liability of
Members of
Company
carrying on
Business
with less
than Seven
Members.

48. If any Company¹ under this Act carries on Business when the Number of its Members is less than Seven² for a Period of Six Months after the Number has been so reduced, every Person who is a Member of such Company during the Time that it so carries on Business after such Period of Six Months, and is cognizant of the Fact that it is so carrying on Business with fewer than Seven Members, shall be severally liable for the Payment of the whole Debts of the Company contracted during such Time, and may be sued for the same, without the Joinder in the Action or Suit of any other Member.

¹ Except a Private Company, Companies Act, 1907, Sect. 37, *post* p. 281.

² And the Company may then be wound up by the Court, Sect. 79 (3), *post* p. 34.

Provisions for Protection of Members.

49.¹ A General Meeting of every Company under this Act shall be held once at the least in every Year.

¹ Repealed by Sect. 24 of the Companies Act, 1907 (*post* p. 273), which is substituted for it, and see the Companies Act, 1900, Sect. 12, *post* p. 213 as to the "Statutory Meeting," which must be held between one and three months from the date at which the Company is entitled to commence business in the case of every Company limited by Shares.

Power to
alter Regu-
lations by
Special
Resolution.

50. Subject to the Provisions of this Act, and to the Conditions contained in the Memorandum of Association, any Company formed under this Act may, in General Meeting from Time to Time, by passing a Special Resolution in manner herein-after mentioned,¹ alter all or any of the Regulations of the Company contained in the Articles of Association² or in the Table marked A. in the First Schedule, where such Table is applicable to the Company, or make new Regulations

to the Exclusion of or in addition to all or any of the Regulations of the Company; and any Regulations so made by Special Resolution shall be deemed to be Regulations of the Company of the same Validity as if they had been originally contained in the Articles of Association, and shall be subject in like manner to be altered or modified by any subsequent Special Resolution.

¹ Sect. 51, *infra*.

² Sects. 14, 15 and 16, *ante* pp. 6, 7.

51. A Resolution passed by a Company under this Act shall be deemed to be special whenever a Resolution has been passed by a Majority of not less than Three Fourths of such Members of the Company for the Time being entitled, according to the Regulations of the Company, to vote as may be present, in Person or by Proxy (in Cases where by the Regulations of the Company Proxies are allowed), at any General Meeting of which Notice specifying the Intention to propose such Resolution has been duly given, and such Resolution has been confirmed by a Majority of such Members for the Time being entitled, according to the Regulations of the Company, to vote as may be present, in Person or by Proxy, at a subsequent General Meeting, of which Notice has been duly given, and held at an interval of not less than Fourteen Days, nor more than One Month from the Date of the Meeting at which such Resolution was first passed: At any Meeting mentioned in this Section, unless a Poll is demanded [by at least Five Members],¹ a Declaration of the Chairman that the Resolution has been carried shall be deemed conclusive Evidence of the Fact, without Proof of the Number or Proportion of the Votes recorded in favour of or against the same: Notice of any Meeting shall, for the Purposes of this Section, be deemed to be duly given and the Meeting to be duly held, whenever such Notice is given and Meeting held in manner prescribed by the Regulations of the Company: In computing the Majority under this Section, when a Poll is de-

Definition
of Special
Resolution

manded, Reference shall be had to the Number of Votes to which each Member is entitled by the Regulations of the Company.

¹ Repealed by the Companies Act, 1907, Sect. 51 and 4th Schedule, *post* p. 291, Sect. 25 thereof (*post* p. 274) being substituted.

revision
re no
ulations
> Meet-

52. In Default of any Regulations as to voting every Member shall have One Vote, and in default of any Regulations as to summoning General Meetings a Meeting shall be held to be duly summoned of which Seven Days' Notice in Writing has been served on every Member in manner in which Notices are required to be served by the Table marked A.¹ in the First Schedule hereto, and in Default of any Regulations as to the Persons to summon Meetings Five Members shall be competent to summon the same, and in Default of any Regulations as to who is to be Chairman of such Meeting, it shall be competent for any Person elected by the Members present to preside.

¹ Now Table A., revised, clauses 110 to 113, *post* p. 119. Also Sects. 62 and 63, *post* p. 27.

53. A Copy of any Special¹ Resolution that is passed by any Company under this Act shall be printed and forwarded to the Registrar of Joint Stock Companies, and be recorded by him: If such Copy is not so forwarded within Fifteen Days from the Date of the Confirmation² of the Resolution, the Company shall incur a Penalty³ not exceeding Two Pounds for every Day after the Expiration of such Fifteen Days during which such Copy is omitted to be forwarded, and every Director and Manager of the Company who shall knowingly and wilfully authorize or permit such Default shall incur the like Penalty.³

¹ Or Extraordinary, Companies Act, 1907, Sect. 45, *post* p. 284

² Or (in the case of an Extraordinary Resolution) the passing of such Resolution, Companies Act, 1907, Sect. 45, *post* p. 284.

³ Recoverable summarily, Companies Act, 1907, Sect. 49 *post* p. 285.

ies of
cial Re-
tions.

54. Where Articles of Association have been registered, a Copy of every Special Resolution for the time being in force shall be annexed to or embodied in every Copy of the Articles of Association that may be issued after the passing of such Resolution: Where no Articles of Association have been registered, a Copy of any Special Resolution shall be forwarded in Print to any Member requesting the same on Payment of One Shilling, or such less Sum as the Company may direct:

And if any Company makes Default in complying with the Provisions of this Section it shall incur a Penalty¹ not exceeding One Pound for each Copy in respect of which such Default is made; and every Director and Manager of the Company who shall knowingly and wilfully authorize or permit such Default shall incur the like Penalty.¹

¹ Recoverable summarily, Companies Act, 1907, Sect. 49, *post* p. 285.

55.¹ Any Company under this Act may, by Instrument in Writing under its Common Seal, empower any Person, either generally or in respect of any specified Matters, as its Attorney, to execute Deeds on its Behalf in any Place not situate in the United Kingdom; and every Deed signed by such Attorney, on behalf of the Company, and under his Seal, shall be binding on the Company, and have the same Effect as if it were under the Common Seal of the Company.

Execution
of Deeds
abroad.

¹ See also the Companies Seals Act, 1864, *post* p. 140.

56. The Board of Trade may appoint One or more competent Inspectors to examine into the Affairs of any Company under this Act, and to report thereon, in such Manner as the Board may direct, upon the Applications following; (that is to say,)

Examina-
tion of
Affairs of
Company
by Inspec-
tors ap-
pointed by
the Board
of Trade.

- (1.) In the Case of a Banking Company that has a Capital divided into shares, upon the Application of Members holding not less than One Third Part of the whole Shares of the Company for the Time being issued:
- (2.) In the Case of any other Company that has a Capital divided into Shares, upon the Application of Members holding not less than One Fifth Part of the whole Shares of the Company for the Time being issued:
- (3.) In the Case of any Company not having a Capital divided into Shares, upon the Application of Members being in number not less than One Fifth of the whole Number of Persons for the Time being entered on the Register of the Company as Members.

¹ Now "One Tenth," Companies Act, 1907, Sect. 44, *post* p. 284.

Application
for Inspec-
tion to be
supported
by Evi-
dence.

57. The Application shall be supported by such Evidence as the Board of Trade may require for the Purpose of showing that the Applicants have good Reason for requiring such Investigation to be made, and that they are not actuated by malicious Motives in instituting the same; the Board of Trade may also require the Applicants to give Security for Payment of the Costs of the Inquiry before appointing any Inspector or Inspectors.

Inspection
of Books
and Ex-
amination
of Officers.

58. It shall be the Duty of all Officers and Agents of the Company to produce for the Examination of the Inspectors all Books and Documents in their Custody or Power: Any Inspector may examine upon Oath the Officers and Agents of the Company in relation to its Business, and may administer such Oath accordingly: If any Officer or Agent refuses to produce any Book or Document hereby directed to be produced, or to answer any Question relating to the Affairs of the Company, he shall incur a Penalty not exceeding Five Pounds in respect of each Offence.

Result of
Examina-
tion how
dealt with.

59. Upon the Conclusion of the Examination the Inspectors shall report their Opinion to the Board of Trade: Such Report shall be written or printed, as the Board of Trade directs: A Copy shall be forwarded by the Board of Trade to the Registered Office of the Company, and a further Copy shall, at the Request of the Members upon whose Application the Inspection was made, be delivered to them or to any One or more of them: All Expenses of and incidental to any such Examination as aforesaid shall be defrayed by the Members upon whose Application the Inspectors were appointed, unless the Board of Trade shall direct the same to be paid out of the Assets of the Company, which it is hereby authorized to do.

Power of
Company
to appoint
Inspectors.

60. Any Company under this Act may by Special Resolution appoint Inspectors for the Purpose of examining into the Affairs of the Company: The Inspectors so appointed shall have the same Powers and perform the same Duties as Inspectors appointed by the Board of Trade, with this Exception, that, instead

of making their Report to the Board of Trade, they shall make the same in such Manner and to such Persons as the Company in General Meeting directs ; and the Officers and Agents of the Company shall incur the same Penalties, in case of any Refusal to produce any Book or Document hereby required to be produced to such Inspectors, or to answer any question, as they would have incurred if such Inspector had been appointed by the Board of Trade.

61. A Copy of the Report of any Inspectors appointed under this Act, authenticated by the Seal of the Company into whose Affairs they have made Inspection, shall be admissible in any Legal Proceeding, as Evidence of the Opinion of the Inspectors in relation to any Matter contained in such Report.

Report of
Inspectors
to be Evi-
dence.

Notices.

62. Any Summons, Notice, Order, or other Document required to be served upon the Company may be served by leaving the same, or sending it through the Post in a prepaid Letter addressed to the Company, at their Registered Office.¹

Service of
Notices,
etc., on
Company

¹ As to Registered Office of Company, see Sect. 39, *ante* p. 18

63. Any Document to be served by Post on the Company shall be posted in such Time as to admit of its being delivered in the due Course of Delivery within the Period (if any) prescribed for the Service thereof ; and in proving Service of such Document it shall be sufficient to prove that such Document was properly directed, and that it was put as a prepaid Letter into the Post Office.

Service of
Notices,
etc., by
Post.

64. Any Summons, Notice, Order, or Proceeding requiring Authentication by the Company may be signed by any Director, Secretary, or other authorized Officer of the Company, and need not be under the Common Seal of the Company, and the same may be in Writing or in Print, or partly in Writing and partly in Print,

Authenti-
cation of
Notices of
Company,
etc.

Legal Proceedings.

ery of
ties.

65.¹ [All Offences under this Act made punishable by any Penalty may be prosecuted summarily before Two or more Justices, as to *England*, in manner directed by an Act passed in the Session holden in the Eleventh and Twelfth Years of the Reign of Her Majesty Queen Victoria, Chapter Forty-three, intituled *An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to summary Convictions and Orders*, or any Act amending the same; and as to *Scotland*, before Two or more Justices or the Sheriff of the County, in manner directed by the Act passed in the Session of Parliament holden in the Seventeenth and Eighteenth Years of the Reign of Her Majesty Queen Victoria, Chapter One hundred and four, intituled *An Act to amend and consolidate the Acts relating to Merchant Shipping*, or any Act amending the same, as regards Offences in *Scotland* against that Act, not being Offences by that Act described as Felonies or Misdemeanors; and as to *Ireland*, in manner directed by the Act passed in the Session holden in the Fourteenth and Fifteenth Years of the Reign of Her Majesty Queen Victoria, Chapter Ninety-three, intituled *An Act to consolidate and amend the Acts regulating the Proceedings of Petty Sessions and the Duties of Justices of the Peace out of Quarter Sessions in Ireland*, or any Act amending the same.]

¹ Repealed by Companies Act, 1907, Sect. 51 and 4th Schedule, post p. 291, Sect. 49 thereof (post p. 285) being substituted.

cation
alties.

66. The Justices or Sheriff imposing any Penalty under this Act may direct the whole or any Part thereof to be applied in or towards Payment of the Costs of the Proceedings, or in or towards the rewarding the Person upon whose Information or at whose Suit such Penalty has been recovered; and subject to such Direction, all Penalties shall be paid into the Receipt of Her Majesty's Exchequer in such Manner as the Treasury may direct, and shall be carried to and form Part of the Consolidated Fund of the United Kingdom.

67. Every Company under this Act shall cause Minutes of all Resolutions and Proceedings of General Meetings of the Company, and of the Directors or Managers of the Company in Cases where there are Directors or Managers, to be duly entered in Books to be from Time to Time provided for the Purpose; and any such Minute as aforesaid, if purporting to be signed by the Chairman of the Meeting at which such Resolutions were passed or Proceedings had, or by the Chairman of the next succeeding Meeting shall be received as Evidence in all Legal Proceedings; and until the contrary is proved, every General Meeting of the Company or Meeting of Directors or Managers in respect of the Proceedings of which Minutes have been so made shall be deemed to have been duly held and convened, and all Resolutions passed thereat or Proceedings had, to have been duly passed and had, and all Appointments of Directors, Managers, or Liquidators shall be deemed to be valid, and all Acts done by such Directors, Managers, or Liquidators shall be valid, notwithstanding any Defect that may afterwards be discovered in their Appointments or Qualifications.

Evidence of
Proceedings
at Meetings.

68. In the Case of Companies under this Act, and engaged in working Mines within and subject to the Jurisdiction of the Stannaries, the Court of the Vice Warden of the Stannaries shall have and exercise the like Jurisdiction and Powers, as well on the Common Law as on the Equity Side thereof, which it now possesses by Custom, Usage, or Statute in the Case of unincorporated Companies, but only so far as such Jurisdiction or Powers are consistent with the Provisions of this Act and with the Constitution of Companies, as prescribed or required by this Act; and for the Purpose of giving fuller Effect to such Jurisdiction in all Actions, Suits, or Legal Proceedings instituted in the said Court, in Causes or Matters whereof the Court has Cognizance, all Process issuing out of the same and all Orders, Rules, Demands, Notices, Warrants, and Summonses required or authorized by the Practice of the Court to be served on any Company whether

Jurisdiction
of Vice
Warden of
Stannaries.

registered or not registered, or any Member or Contributory thereof, or any Officer, Agent, Director, Manager, or Servant thereof, may be served in any Part of *England* without any Special Order of the Vice Warden for that Purpose, or by such special Order may be served in any Part of the United Kingdom of *Great Britain* and *Ireland*, or in the adjacent Islands, Parcel of the Dominions of the Crown, on such Terms and Conditions as the Court shall think fit; and all Decrees, Orders, and Judgments of the said Court made or pronounced in such Causes or Matters may be enforced in the same Manner in which Decrees, Orders, and Judgments of the Court may now by Law be enforced, whether within or beyond the Local Limits of the Stannaries; and the Seal of the said Court, and the Signature of the Registrar thereof, shall be judicially noticed by all other Courts and Judges in *England*, and shall require no other Proof than the Production thereof: The Registrar of the said Court, or the Assistant Registrar, in making Sales under any Decree or Order of the Court shall be entitled to the same Privilege of selling by Auction or Competition without a License, and without being liable to Duty, as a Judge of the Court of Chancery is entitled to in pursuance of the Acts in that Behalf.

Power to
order Se-
curity for
Costs in
Actions
brought by
Limited
Companies.

69. Where a limited Company is Plaintiff or Pursuer in any Action, Suit, or other Legal Proceeding, any Judge having Jurisdiction in the Matter may, if it appears by any credible Testimony that there is Reason to believe that if the Defendant be successful in his Defence the Assets of the Company will be insufficient to pay his Costs, require sufficient Security to be given for such Costs, and may stay all Proceedings until such Security is given.

Allegations
in Action
against
Members.

70. In any Action or Suit brought by the Company against any Member to recover any Call¹ or other Monies due from such Member in his Character of Member, it shall not be necessary to set forth the special Matter, but it shall be sufficient to allege that the Defendant is a Member of the Company, and is

indebted to the Company in respect of a Call made or other Monies due whereby an Action or Suit hath accrued to the Company.

¹ As to Calls on Shares, *see* Table A., revised, Clauses 12 to 14, *post* p. 96.

Alteration on Forms.

71. The Forms set forth in the Second Schedule hereto, or Forms as near thereto as Circumstances admit, shall be used in all Matters to which such Forms refer: the Board of Trade may from Time to Time make such Alterations in the Tables and Forms contained in the First Schedule hereto, so that it does not increase the Amount of Fees payable to the Registrar in the said Schedule mentioned,¹ and in the Forms in the Second Schedule,² or make such Additions to the last-mentioned Forms as it deems requisite:³ Any such Table or Form, when altered, shall be published in the *London Gazette*, and upon such Publication being made such Table or Form shall have the same Force as if it were included in the Schedule to this Act, but no Alteration made by the Board of Trade in the Table marked A. contained in the First Schedule shall affect any Company registered prior to the Date⁴ of such Alteration, or repeal, as respects such Company, any Portion of such Table.

Forms in
2nd Sched-
ule to be
used.
Board of
Trade may
alter Forms
in Schedule

¹ In Tables B. or C., *post* pp. 121, 122.

² *Post* pp. 124.

³ For forms under the Companies Act, 1900. *see post* p. 240 *et seq.*

⁴ 30th July, 1906, is the date of Table A., revised.

Arbitrations.

72. Any Company under this Act may from Time to Time, by Writing under its Common Seal, agree to refer and may refer to Arbitration, in accordance with "The Railway Companies Arbitration Act, 1859," any existing or future Difference, Question, or other Matter whatsoever in dispute between itself and any other Company or Person, and the Companies Parties to the Arbitration may delegate to the Person or Persons to whom the Reference is made Power to settle any Terms

Power for
Companies
to refer
Matters to
Arbitration
in accord-
ance with
22 & 23 Vict.
c. 59.

or to determine any Matter capable of being lawfully settled or determined by the Companies themselves, or by the Directors or other managing Body of such Companies.

Provisions
of 22 & 23
Vict. c. 59,
to apply.

73. All the Provisions of "The Railway Companies Arbitration Act, 1859," shall be deemed to apply to Arbitrations between Companies and Persons in pursuance of this Act; and in the Construction of such Provisions "the Companies" shall be deemed to include Companies authorized by this Act to refer Disputes to Arbitration.

PART IV.

WINDING UP OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Preliminary.

Meaning of
Contribu-
tory.

74. The Term "Contributory" shall mean every Person¹ liable to contribute to the Assets of a Company under this Act, in the event of the same being wound up: It shall also, in all Proceedings for determining the Persons who are to be deemed Contributories, and in all Proceedings prior to the final Determination of such Persons, include any Person alleged to be a Contributory.

¹ As to who these are, *see* Sect. 38, *ante* p. 17, and also Sects. 76, 77 and 78, *post* p. 33; and Companies (Winding-up) Rules, 1903, 80 to 85, Appendix; as to Companies Registered but not formed under this Act, Sect. 196 (5), *post* p. 83, and as to Un-registered Companies, Sect. 200 *post* p. 88.

Nature of
Liability of
Contribu-
tory.

75. The Liability of any Person to contribute to the Assets of a Company under this Act, in the event of the same being wound up, shall be deemed to create a Debt (in *England* and *Ireland* of the Nature of a Specialty) accruing due from such Person at the Time when his Liability commenced, but payable at the Time or respective Times when Calls are made as

herein-after mentioned¹ for enforcing such Liability; and it shall be lawful in the Case of the Bankruptcy of any Contributory to prove against his Estate the estimated Value of his Liability to future Calls as well as Calls already made.

¹ Sect. 102, p. 43, Sect. 133 (9), p. 56, and Sect. 151, p. 62; also Rules 86 to 90, *post* Appendix.

76. If any Contributory dies either before or after he has been placed on the List of Contributories herein-after mentioned,¹ his Personal Representatives, Heirs, and Devisees shall be liable in a due Course of Administration to contribute to the Assets of the Company in discharge of the Liability of such deceased Contributory and such Personal Representatives, Heirs, and Devisees shall be deemed to be Contributories accordingly.

Contributories in case of Death.

¹ Sect. 98, *post* p. 42; also Rules 80 to 85, *post* Appendix.

77. If any Contributory becomes bankrupt, either before or after he has been placed on the List¹ of Contributories, his Assignees shall be deemed to represent such Bankrupt for all the Purposes of the Winding up, and shall be deemed to be Contributories accordingly, and may be called upon to admit to Proof against the Estate of such Bankrupt, or otherwise to allow to be paid out of his Assets in due Course of Law, any Monies due from such Bankrupt in Respect of his Liability² to contribute to the Assets of the Company being wound up; and for the purposes of this Section any Person who may have taken the Benefit of any Act for the Relief of Insolvent Debtors before the Eleventh Day of *October* One thousand eight hundred and sixty-one shall be deemed to have become bankrupt.

Contributories in case of Bankruptcy.

¹ Sect. 98, *post* p. 42; also Rules 80 to 85, *post* Appendix.

² Sect. 75, *ante* p. 32.

78. If any Female Contributory marries, either before or after she has been placed on the List¹ of Contributories, her Husband² shall during the Continuance of the Marriage be liable to contribute to the Assets of the Company the same Sum as she

Contributories in case of Marriage.

would have been liable to contribute if she had not married, and he shall be deemed to be a Contributory accordingly.

¹ Sect. 98, *post* p. 42; also Rules 80 to 85, *post* Appendix.

² But *see* now Sects. 6, 7, and 14 of the Married Women's Property Act, 1882 (33 and 34 Vict., cap. 75).

Winding up by Court.

Circumstances under which Company may be wound up by Court.

79. A Company under this Act may be wound up by the Court as herein-after defined,¹ under the following Circumstances; (that is to say,)

- (1.) Whenever the Company has passed a Special Resolution² requiring the Company to be wound up by the Court:
- (2.) Whenever the Company does not³ commence its Business within a Year from its Incorporation, or suspends⁴ its Business for the Space of a whole Year:
- (3.) Whenever the Members are reduced in Number to less than Seven:⁴
- (4.) Whenever the Company is unable⁵ to pay its Debts:⁶
- (5.) Whenever the Court is of opinion that it is just and equitable that the Company should be wound up.⁷

¹ Sects. 1 and 32 (2) of the Companies Winding-up Act, 1890, *post* p. 178.

² As to what is a Special Resolution, *see* Sect. 51, *ante* p. 23.

³ In these cases a Company is also liable to be struck off as defunct, Companies Act, 1880, Sect. 7, *post* p. 170.

⁴ As to this, *see* also Sect. 48, *ante* p. 22, and the Companies Act, 1867, Sect. 40, *post* p. 157. This does not apply to private Companies, Companies Act, 1907, Sect. 37; *post* p. 281.

⁵ *See* next Sect.

⁶ Including contingent and prospective liabilities, Companies Act, 1907, Sect. 28, *post* p. 276.

⁷ And *see* also the Companies Act, 1900, Sect. 12 (8), *post* p. 229; also Companies Act, 1907, Sect. 29, *post* p. 276.

Company when to be deemed unable to pay its Debts.

80. A Company under this Act shall be deemed to be unable to pay its Debts:¹

- (1.) Whenever a Creditor, by Assignment or otherwise, to whom the Company is indebted, at Law or in Equity, in a Sum exceeding Fifty Pounds then due, has served on the Company, by leaving the same at their Registered Office,

a Demand under his Hand requiring the Company to pay the Sum so due, and the Company has for the Space of Three Weeks succeeding the Service of such Demand neglected to pay such Sum, or to secure or compound for the same to the reasonable Satisfaction of the Creditor:

- (2.) Whenever, in *England* and *Ireland*, Execution or other Process issued on a Judgment, Decree, or Order obtained in any Court in favour of any Creditor, at Law or in Equity in any Proceeding instituted by such Creditor against the Company, is returned unsatisfied in whole or in part:
- (3.) Whenever, in *Scotland*, the Induciæ of a Charge for payment on an Extract Decree, or an Extract registered Bond, or an Extract registered Protest have expired without Payment being made:
- (4.) Whenever it is proved to the Satisfaction of the Court that the Company is unable to pay its Debts.

¹ Including contingent and prospective liabilities, Companies Act, 1907, Sect. 28, *post* p. 276.

81.¹ The Expression "the Court," as used in this Part of this Act, shall mean the following Authorities; (that is to say,) Definition of "the Court."

In the Case of a Company engaged in working any Mine within and subject to the Jurisdiction of the Stannaries, the Court of the Vice Warden of the Stannaries, unless the Vice Warden certifies that in his Opinion the Company would be more advantageously wound up in the High Court of Chancery, in which Case "the Court" shall mean the High Court of Chancery:

In the Case of a Company registered in *England* that is not engaged in working any such Mine as aforesaid, the High Court of Chancery:

In the Case of a Company registered in *Ireland*, the Court of Chancery in *Ireland*:

In all Cases of Companies registered in *Scotland*, the Court of Session in either Division thereof:

Provided that where the Court of Chancery in *England* or *Ireland* makes an Order for winding up a Company under this Act, it may, if it thinks fit, direct all subsequent Proceedings for winding up the same to be had in the Court of Bankruptcy

having Jurisdiction in the Place in which the Registered Office of the Company is situate; and thereupon such last-mentioned Court of Bankruptcy shall, for the Purposes of winding up the Company, be deemed to be "the Court" within the Meaning of the Act, and shall have for the Purposes of such winding up all the Powers of the High Court of Chancery, or of the Court of Chancery in *Ireland*, as the Case may require.

¹ *Repealed by the Companies (Winding-up) Act, 1890, Sect. 1, whereof (post p. 178) is substituted for this Section.*

Application
for winding
up, to be
made by
petition.

82. Any Application to the Court for the winding up¹ of a Company under this Act shall be by Petition²; it may be presented by the Company, or by any One or more Creditor³ or Creditors, Contributory or Contributories⁴ of the Company, or by all or any of the above Parties, together or separately; and every Order which may be made on any such Petition shall operate in favour of all the Creditors and all the Contributories of the Company in the same Manner as if it had been made upon the joint Petition of a Creditor and a Contributory.

¹ See also as to the machinery for winding up Companies, the Companies (Winding-up) Act, 1890, *post* p. 178, and rules thereunder in Appendix.

² Rules 25 to 30.

³ Including a prospective or contingent Creditor, Companies Act, 1907, Sect. 28, *post* p. 276.

⁴ Subject to the provisions of the Companies Act, 1867, Sect. 40, *post* p. 157.

Power of
Court.

83.¹ Any Judge of the High Court of Chancery may do in Chambers any Act which the Court is hereby authorized to do; and the Vice Warden of the Stannaries may direct that a Petition for winding up a Company be heard by him at such Time and at such Place within the Jurisdiction of the Stannaries, or within or near to the Place where the Registered Office of the Company is situated, as he may deem to be convenient to the Parties concerned, or (with the Consent of the Parties concerned) at any Place in *England*; and all Orders made thereupon shall have the same Force and Effect as if they had been made by the Vice Warden sitting at *Truro* or elsewhere within the Jurisdiction of the Court, and all Parties and Persons summoned to attend at the Hearing of any such Petition shall be compellable to give their Attendance before the Vice Warden by like Process and in like

Manner as at the Hearing of any Cause or Matter at the usual Sitting of the said Court; and the Registrar of the Court may, subject to Exception or Appeal to the Vice Warden as heretofore used, do and exercise such and the like Acts and Powers in the Matter of winding up² as he is now used to do and exercise in a Suit on the Equity Side of the said Court.

¹ See also Winding-up Rules 4 to 10, *post* Appendix.

² "Winding up" here includes proceedings under the Companies Act, 1867, Sect. 12 of that Act, *post* p. 147.

84. A Winding up of a Company by the Court shall be deemed to commence at the Time of the Presentation¹ of the Petition for the Winding up.

Commencement of winding up by Court.

¹ Rule 26, *post* Appendix.

85.¹ The Court may, at any Time after the Presentation of a Petition for winding up a Company under this Act, and before making an Order for winding up the Company, upon the Application of the Company, or of any Creditor or Contributory of the Company, restrain further Proceedings in any Action, Suit or Proceeding against the Company, upon such Terms as the Court thinks fit; the Court may also at any Time after the Presentation of such Petition, and before the First Appointment of Liquidators, appoint provisionally² an Official Liquidator³ of the Estate and Effects of the Company.

Court may grant Injunction to restrain proceedings and appoint provisionally an Official Liquidator.

¹ Where Company is registered but not formed under this Act, *see* Sect. 197, *post* p. 84; where Company is unregistered, *see* Sect. 201, *post* p. 88.

² The Companies (Winding-up) Act, 1890, Sect. 4 (5), *post* p. 167, and Rule 31, *post* Appendix.

³ As to Official Liquidators, *see* Sects. 92 to 96, *post* p. 19 *et seq.*

86. Upon hearing the Petition¹ the Court may dismiss the same with or without Costs,² may adjourn the Hearing conditionally or unconditionally, and may make any Interim Order, or any other Order that it deems just.

Course to be pursued by Court on hearing Petition.

¹ Sect. 82, *ante* p. 36.

² As to security for Costs where Petitioner is only a prospective Creditor, *see* Companies Act, 1907, Sect. 28, *post* p. 276.

Actions and Suits to be stayed after Order for winding up.

87.¹ When an Order has been made for winding up a Company under this Act no Suit, Action, or other Proceedings shall be proceeded with or commenced against the Company except with the Leave of the

Court, and subject to such Terms as the Court may impose.

¹ Where Company is registered but not formed under this Act, see Sect. 198, *post* p. 84; where Company is unregistered, see Sect. 202, *post* p. 88.

Copy of
Order to be
forwarded
to Registrar.

88. When an Order has been made for winding up a Company under this Act, a Copy of such Order shall forthwith be forwarded by the Company to the Registrar of Joint Stock Companies, who shall make a Minute thereof in his Books relating to the Company.

Power of
Court to
stay Pro-
ceedings.

89. The Court may at any Time after an Order has been made for winding up a Company, upon the Application by Motion of any Creditor or Contributory of the Company, and upon Proof to the Satisfaction of the Court that all Proceedings in relation to such Winding-up ought to be stayed, make an Order staying the same, either altogether or for a limited Time, on such Terms and subject to such Conditions as it deems fit.

Effect of
Order on
Share
Capital of
Company
limited by
Guarantee.

90. When an Order has been made for winding up a Company limited by Guarantee¹ and having a Capital divided into Shares, any Share Capital that may not have been called up shall be deemed to be Assets of the Company, and to be a Debt (in *England* and *Ireland* of the Nature of a Specialty) due to the Company from each Member to the Extent of any Sums that may be unpaid on any Shares held by him, and payable at such time as may be appointed by the Court.

¹ But see now the Companies Act, 1900, Sect. 27, *post* p. 237.

Court may
have regard
to Wishes
of Creditors
or Contrib-
utories.

91.¹ The Court may, as to all Matters relating to the Winding up, have regard to the Wishes of the Creditors or Contributories, as proved to it by any sufficient Evidence, and may, if it thinks it expedient, direct Meetings² of the Creditors or Contributories to be summoned, held, and conducted in such Manner as the Court directs, for the Purpose of ascertaining their Wishes, and may appoint a Person to act as Chairman of any such Meeting, and to report the Result of such Meeting to the Court: In the case of Creditors, regard is to be had to the Value of the Debts due to each Cre-

ditor, and in the Case of Contributories to the Number of Votes conferred on each Contributory by the Regulations of the Company.

¹ The Companies (Winding-up) Act, 1890, Sect. 13, *post* p. 189.

² See Companies (Winding-up) Act, 1890, Sect. 6, *post* p. 182. and 1st Schedule thereto, *post* p. 186; also Rules 50 to 52 and 121 to 131, *post* Appendix.

Official Liquidators.

92. For the Purpose of conducting the Proceedings¹ in winding up a Company, and assisting the Court therein, there may be appointed a Person or Persons to be called an Official Liquidator² or Official Liquidators; and the Court having Jurisdiction may appoint such Person or Persons, either provisionally or otherwise, as it thinks fit, to the Office of Official Liquidator or Official Liquidators; in all Cases if more Persons than One are appointed to the Office of Official Liquidator, the Court shall declare whether any Act hereby required or authorized to be done by the Official Liquidator is to be done by all or any One or more of such Persons. [The Court may also determine whether any and what Security is to be given by any Official Liquidator on his Appointment; ³] if no Official Liquidator is appointed, or during any Vacancy in such Appointment, all the Property of the Company shall be deemed to be in the Custody of the Court.

¹ Rules 181, 184, 185, *post* Appendix.

² Now become Official Receiver by virtue of the Companies (Winding-up) Act, 1890, Sect. 4, *post* p. 180; see also Rule 59, *post* Appendix.

³ Repealed by the Companies (Winding-up) Act, 1890, *post* p. 203. Resignations, Removals, filling up Vacancies, and Remuneration

93. Any Official Liquidator may resign¹ or be removed² by the Court on due Cause shown: And any Vacancy in the Office of an Official Liquidator appointed by the Court shall be filled by the Court: There shall be paid to the Official Liquidator such Salary or Remuneration,³ by way of Per-centage or otherwise, as the Court may direct; and if more Liquidators than One are appointed such Remuneration shall be distributed amongst them in such Proportions as the Court directs.

¹ Rule 145, *post* Appendix.

² Rules 146 and 182, *post* Appendix.

³ Rules 137, 138, 169, *post* Appendix.

Style and
Duties of
Official
Liquidator.

94. The Official Liquidator or Liquidators shall be described by the Style of the Official Liquidator or Official Liquidators of the particular Company in respect of which he is or they are appointed, and not by his or their individual Name or Names; he or they shall take into his or their Custody, or under his or their Control, all the Property, Effects, and Things in Actions to which the Company is or appears to be entitled, and shall perform such Duties in reference to the Winding up of the Company as may be imposed by the Court.

Powers of
Official
Liquidator.

95. The Official Liquidator shall have Power,¹ with the Sanction of the Court, to do the following Things:

To bring or defend any Action, Suit, or Prosecution, or other Legal Proceeding, Civil or Criminal, in the Name and on Behalf of the Company:

To carry on the Business of the Company, so far as may be necessary for the beneficial winding up of the same:

To sell the Real and Personal and Heritable and Moveable Property, Effects and Things in Action of the Company by Public Auction or Private Contract, with Power to transfer the whole thereof to any Person or Company, or to sell the same in Parcels:

To do all Acts and to execute, in the Name and on behalf of the Company, all Deeds, Receipts, and other Documents, and for that Purpose to use, when necessary, the Company's Seal:

To prove, rank, claim, and draw a Dividend, in the Matter of the Bankruptcy or Insolvency or Sequestration of any Contributory, for any Balance against the Estate of such Contributory, and to take and receive Dividends in respect of such Balance, in the Matter of Bankruptcy or Insolvency or Sequestration, as a separate Debt due from such Bankrupt or Insolvent, and rateably with the other separate Creditors:

To draw, accept, make, and endorse any Bill of Ex-

change or Promissory Note in the Name and on behalf of the Company, also to raise upon the Security of the Assets of the Company from Time to Time any requisite Sum or Sums of Money; and the drawing, accepting, making, or endorsing of every such Bill of Exchange or Promissory Note as aforesaid on behalf of the Company shall have the same Effect with respect to the Liability of such Company as if such Bill or Note had been drawn, accepted, made, or endorsed by or on behalf of such Company in the course of carrying on the Business thereof:

To take out, if necessary, in his official Name, Letters of Administration to any deceased Contributory, and to do in his official Name any other Act that may be necessary for obtaining Payment of any Monies due from a Contributory or from his Estate, and which Act cannot be conveniently done in the Name of the Company; and in all Cases where he takes out Letters of Administration, or otherwise uses his official Name for obtaining Payment of any Monies due from a Contributory, such Monies shall, for the Purpose of enabling him to take out such Letters or recover such Monies, be deemed to be due to the Official Liquidator himself.

To do and execute all such other Things as may be necessary for winding up the Affairs of the Company and distributing its Assets.

¹The Companies (Winding-up) Act, 1890, Sect. 12, *post* p. 189.

96. The Court may provide by any Order that the Official Liquidator may exercise any of the above Powers without the Sanction or Intervention of the Court, and where an Official Liquidator is provisionally appointed¹ may limit and restrict his Powers by the Order appointing him.

Discretion
of Official
Liquidator.

¹As provided for by Sect. 85, *ante* p. 37, and Rule 31, *post* Appendix.

Appointment of Solicitor to Official Liquidator.

97.¹ The Official Liquidator may, with the Sanction of the Court, appoint a Solicitor or Law Agent to assist him in the Performance of his Duties.

¹ *Repealed by the Companies (Winding-up) Act, 1890, and replaced by Sect. 12 (4) of that Act, post p. 180.*

Ordinary Powers of Court.

List of Contributories and Collection and Application of Assets.

98. As soon as may be after making an Order for winding up the Company, the Court shall settle¹ a List of Contributories, with Power to rectify the Register of Members in all Cases where such Rectification is required in pursuance of this Act,² and shall cause the Assets³ of the Company to be collected, and applied in discharge of its Liabilities.

¹ Rules 80 to 85, *post* Appendix.

² Sect. 35, *ante* p. 15.

³ Rule 78, *post* Appendix.

Provision as to Representative Contributories.

99.¹ In settling the List of Contributories, the Court shall distinguish between Persons who are Contributories in their own Right and Persons who are Contributories as being Representatives of or being liable to the Debts of others; it shall not be necessary, where the Personal Representative of any deceased Contributory is placed on the List, to add the Heirs or Devises of such Contributory, nevertheless such Heirs or Devises may be added as and when the Court thinks fit.

¹ The Companies (Winding-up) Act, 1890, Sect. 13, *post* p. 189, and Rules 80 to 85, *post* Appendix.

Power of Court to require Delivery of Property to Official Liquidator.

100.¹ The Court may, at any Time after making an Order for Winding up a Company, require any Contributory for the Time being settled on the List of Contributories, Trustee, Receiver, Banker, or Agent, or Officer of the Company to pay, deliver, convey, surrender, or transfer forthwith, or within such Time as the Court directs, to or into the Hands of the Official Liquidator, any Sum or Balance, Books, Papers, Estate, or Effects which happen to be in his Hands for the Time being, and to which the Company is *prima facie* entitled.

¹ The Companies (Winding-up) Act, 1890, Sect. 13, *post* p. 189, and Rule 79, *post* Appendix.

101. The Court may, at any Time after making an Order for winding up the Company, make an Order on any Contributory for the Time being settled on the List of Contributories, directing Payment to be made, in manner in the said Order mentioned, of any Monies due from him or from the Estate of the Person whom he represents to the Company, exclusive of any Monies which he or the Estate of the Person whom he represents may be liable to contribute by virtue of any Call made or to be made by the Court in pursuance of this Part of this Act;¹ and it may, in making such Order, when the Company is not limited, allow to such Contributory² by way of Set-off any Monies due to him or the Estate which he represents from the Company on any independent Dealing or Contract with the Company, but not any Monies due to him as a Member of the Company in respect of any Dividend or Profit:

Power of Court to order Payment of Debts by Contributory.

Provided that when all the Creditors of any Company whether limited or unlimited are paid in full, any Monies due on any Account whatever to any Contributory from the Company may be allowed to him by way of Set-off against any subsequent Call or Calls.

¹ Sect. 102 *infra*.

² And also to a Director with unlimited Liability; the Companies Act, 1867, Sect. 6, *post* p. 144.

102. The Court may, at any Time after making an Order for winding up a Company, and either before or after it has ascertained the Sufficiency of the Assets of the Company, make Calls¹ on and order Payment thereof by all or any of the Contributories, for the Time being settled on the List of Contributories, to the Extent of their Liability for Payment of all or any Sums it deems necessary to satisfy the Debts and Liabilities of the Company, and the Costs, Charges, and Expenses of winding it up, and for the Adjustment of the Rights of the Contributories amongst themselves;² and it may, in making a Call, take into Consideration the Probability that some of the Contributories upon whom the same is made may partly or wholly fail to pay their respective Portions of the same.

Power of Court to make Calls.

¹ The Companies (Winding-up) Act, 1890, Sect. 13, *post* p. 189, and Rules 86 to 90, *post* Appendix.

² Sect. 109, *post* p. 46.

Power of
Court to
order Pay-
ment into
Bank.

103. The Court may order any Contributory, Purchaser, or other Person from whom Money is due to the Company to pay the same into the Bank of *England* or any Branch thereof to the Account of the Official Liquidator instead of to the Official Liquidator, and such Order may be enforced in the same Manner as if it had directed Payment to the Official Liquidator.

Regulation
of Account
with Court.

104. All Monies, Bills, Notes, and other Securities paid and delivered into the Bank of *England* or any Branch thereof in the event of a Company being wound up by the Court, shall be subject to such Order and Regulation for the keeping of the Account of such Monies and other Effects, and for the Payment and Delivery in, or Investment and Payment and Delivery out of the same as the Court may direct.

Proceedings
in case of
Representa-
tive Con-
tributory
not paying
Monies
ordered.

105. If any Person made a Contributory¹ as Personal Representative of a deceased Contributory makes Default in paying any Sum ordered to be paid by him, Proceedings may be taken for administering the Personal and Real Estates of such deceased Contributory, or either of such Estates, and of compelling Payment thereof of the Monies due.

¹ Sect. 76, *ante* p. 38.

Order con-
clusive Evi-
dence.

106. Any Order made by the Court in pursuance of this Act¹ upon any Contributory shall, subject to the Provisions herein contained² for appealing against such Order, be conclusive Evidence that the Monies, if any, thereby appearing to be due or ordered to be paid are due, and all other pertinent Matters stated in such Order are to be taken to be truly stated as against all Persons, and in all Proceedings whatsoever, with the Exception of Proceedings taken against the Real Estate of any deceased Contributory, in which Case such Order shall only be *prima facie* Evidence for the Purpose of charging his Real Estate, unless his Heirs or Devises³ were on the List of Contributories at the Time of the Order being made.

¹ Sects. 101, 102 and 103, *ante* pp. 43, 44.

² Sect. 124, *post* p. 50.

³ Sect. 99, *ante* p. 42.

107.¹ The Court may fix a certain Day or certain Days on or within which Creditors of the Company are to prove their Debts or Claims, or to be excluded from the Benefit of any Distribution made before such Debts are proved.

Court may fix a time for Creditors to prove.

¹ See the Companies (Winding-up) Act, 1890, Sect. 13, *post* p. 189. and Rule 104, *post* Appendix.

108. If in the course of proving the Debts and Claims of Creditors in the Court of the Vice Warden of the Stannaries any Debt or Claim is disputed by the Official Liquidator or by any Creditor or Contributory, or appears to the Court to be open to Question, the Court shall have Power, subject to Appeal as hereinafter provided, to adjudicate upon it, and for that Purpose the said Court shall have and exercise all needful Powers of Inquiry touching the same by Affidavit or by oral Examination of Witnesses or of Parties, whether voluntarily offering themselves for Examination or summoned to attend by compulsory Process of the Court, or to produce Documents before the Court, and the Court shall also have power incidentally, to decide on the Validity and Extent of any Lien or Charge claimed by any Creditor on any Property of the Company in respect of such Debt, and to make Declarations of Right, binding on all Persons interested; and for the more satisfactory Determination of any Question of Fact, or mixed Question of Law and Fact arising on such Inquiry, the Vice Warden shall have Power, if he thinks fit, to direct and settle any Action or Issue to be tried either on the Common Law Side of his Court, or by a Common or Special Jury, before the Justices of Assize in and for the Counties of *Cornwall* or *Devon*, or at any Sitting of One of the Superior Courts in *London* or *Middlesex*, which Action or Issue shall accordingly be tried in due Course of Law, and without other or further Consent of Parties; and the Finding of the Jury in such Action or Issue shall be conclusive of the Facts found, unless the Judge who tried it makes known to the Vice Warden that he was not satisfied with the Finding, or unless it appears to

Proceedings in the Court of the Vice Warden of the Stannaries on Proof of Debts.

the Vice Warden that, in consequence of Miscarriage, Accident, or the subsequent Discovery of fresh material Evidence, such Finding ought not to be conclusive.

109. The Court shall adjust the Rights of the Contributories amongst themselves,¹ and distribute² any Surplus that may remain amongst the Parties entitled thereto.

¹ Sect. 102, *ante* p. 43.

² Rules 119, 120, *post* Appendix.

Court to adjust Rights of Contributories.

110. The Court may, in the event of the Assets being insufficient to satisfy the Liabilities, make an Order as to the Payment out of the Estate of the Company of the Costs, Charges, and Expenses incurred in winding up any Company in such order¹ of Priority as the Court thinks just.

Court may determine Priority of Costs.

¹ Rule 170, *post* Appendix.

111. When the Affairs of the Company have been completely wound up, the Court shall make an Order that the Company be dissolved¹ from the Date of such Order, and the Company shall be dissolved accordingly.

Dissolution of Company.

¹ As to subsequent avoidance of dissolution, *see* Companies Act, 1907, Sect. 31 (2), *post* p. 277.

112. Any Order so made shall be reported by the Official Liquidator to the Registrar, who shall make a Minute accordingly in his Books of the Dissolution of such Company.

Registrar to be informed of and make Minute of Dissolution of Company. Penalty on not reporting Dissolution of Company.

113. If the Official Liquidator makes Default in reporting to the Registrar, in the Case of a Company being wound up by the Court, the Order that the Company be dissolved, he shall be liable to a Penalty¹ not exceeding Five Pounds for every Day during which he is so in Default.

¹ Recoverable summarily, Companies Act, 1907, Sect. 49, *post* p. 285.

*Petition to be *Lis pendens*.*

114. *Repealed by 30 & 31 Vict., c. 47.*

Extraordinary Powers of Court.

115. The Court may, after it has made an Order for winding up the Company, summon before it any Officer of the Company or Person known or suspected to have in his Possession any of the Estate or Effects of the Company, or supposed to be indebted to the Company, or any Person whom the Court may deem capable of giving Information concerning the Trade, Dealings, Estate, or Effects of the Company;¹ and the

Power of Court to summon Persons before it suspected of having Property of Company, &c.

Court may require any such Officer or Person to produce any Books, Papers, Deeds, Writings, or other Documents in his Custody or Power relating to the Company; and if any Person so summoned, after being tendered a reasonable Sum for his Expenses, refuses to come before the Court at the Time appointed, having no lawful Impediment (made known to the Court at the Time of its sitting, and allowed by it), the Court may cause such Person to be apprehended;² and brought before the Court for Examination;³ nevertheless, in Cases where any Person claims any Lien on Papers, Deeds, or Writings or Documents produced by him, such Production shall be without Prejudice to such Lien, and the Court shall have Jurisdiction in the Winding up to determine all Questions relating to such Lien.

¹ As to examination of persons connected with promotion or formation of Company, *see* Companies (Winding-up) Act, 1890, Sect. 8 (3), *post* p. 184.

² Rules 194 to 197, *post* Appendix.

³ Sect. 117 *infra*, and Rules 76 and 5 (2), *post* Appendix.

116. If, after an Order for winding up in the Court of the Vice Warden of the Stannaries, it appears that any Person claims Property in, or any Lien, legal or equitable, upon any of the Machinery, Materials, Ores, or Effects on the Mine, or on Premises occupied by the Company in connexion with the Mine, or to which the Company was at the Time of the Order *prima facie* entitled, it shall be lawful for the Vice Warden or the Registrar to adjudicate upon such Claim or Interpleader in the Manner provided by Section Eleven of the Act passed in the Eighteenth Year of the Reign of Her present Majesty, Chapter Thirty-two; and any Action or Issue directed upon such Interpleader may, if the Vice Warden think fit, be tried in his Court or at the Assizes or the Sittings in *London* or *Middlesex*, before a Judge of One of the Superior Courts, in the Manner and on the Terms and Conditions herein-before provided in the Case of disputed Debts and Claims of Creditors.

Special Provisions as to Court of Vice Warden of the Stannaries.

117. The Court may examine upon Oath, either by Word of Mouth or upon written Interrogatories, any Person appearing or brought before them in manner

Examination of Parties by Court.

aforesaid¹ concerning the Affairs, Dealings, Estate, or Effects of the Company, and may reduce into Writing the Answers of every such Person, and require him to subscribe the same.²

¹ Sect. 115, *ante* p. 46.

² See also Rules 76 and 5 (2), *post* Appendix.

Power to arrest Contributory about to abscond, or to remove or conceal any of his Property.

118. The Court may, at any Time before or after it has made an Order for winding up a Company, upon Proof being given that there is probable Cause for believing that any Contributory¹ to such Company is about to quit the United Kingdom, or otherwise abscond or to remove or conceal any of his Goods or Chattels, for the Purpose of evading Payment of Calls, or for avoiding Examination in respect of the Affairs of the Company, cause such Contributory to be arrested,² and his Books, Papers, Monies, Securities for Monies, Goods, and Chattels to be seized, and him and them to be safely kept until such Time as the Court may order.

¹ Sect. 74, *ante* p. 32.

² Rules 194 to 197, *post* Appendix.

Powers of Court cumulative.

119. Any Powers by this Act conferred on the Court shall be deemed to be in addition to and not in restriction of any other Powers subsisting, either at Law or in Equity, of instituting Proceedings against any Contributory, or the Estate of any Contributory, or against any Debtor of the Company, for the Recovery of any Call or other Sums due from such Contributory or Debtor, or his Estate, and such Proceedings may be instituted accordingly.

Enforcement of and Appeal from Orders.

Power to enforce Orders.

120. All Orders made by the Court of Chancery in *England* or *Ireland* under this Act may be enforced¹ in the same Manner in which Orders of such Court of Chancery made in any Suit pending therein may be enforced, and for the Purposes of this Part of this Act the Court of the Vice Warden of the Stannaries shall, in addition to its ordinary Powers, have the same Power of enforcing any Orders made by it as the Court of Chancery in *England* has in relation to Matters within

the Jurisdiction of such Court, and for the last-mentioned Purposes the Jurisdiction of the Vice Warden of the Stannaries shall be deemed to be co-extensive in local Limits with the Jurisdiction of the Court of Chancery in *England*.

¹ Rule 24, *post* Appendix.

121. Where an Order, Interlocutor, or Decree has been made in *Scotland* for winding up a Company by the Court, it shall be competent to the Court in *Scotland* during Session, and to the Lord Ordinary on the Bills during Vacation, on Production by the Liquidators of a List certified by them of the Names of the Contributories liable in Payment of any Calls which they may wish to enforce, and of the Amount due by each Contributory respectively, and of the Date when the same became due, to pronounce forthwith a Decree against such Contributories for Payment of the Sums so certified to be due by each of them respectively, with Interest from the said Date till Payment, at the Rate of Five Pounds *per Centum per Annum*, in the same Way and to the same Effect as if they had severally consented to Registration for Execution, on a Charge of Six Days, of a legal Obligation to pay such Calls and Interest; and such Decree may be extracted immediately, and no Suspension thereof shall be competent, except on Caution or Consignation, unless with special Leave of the Court or Lord Ordinary.

Power to
order Con-
tributories
in *Scotland*
to pay Calls

122. Any Order made by the Court in *England* for or in the course of the Winding up of a Company under this Act shall be enforced in *Scotland* and *Ireland* in the Courts that would respectively have had Jurisdiction in respect of such Company if the Registered Office of the Company has been situate in *Scotland* or *Ireland*, and in the same Manner in all respects as if such Order had been made by the Courts that are hereby required to enforce the same; and in like Manner Orders, Interlocutors, and Decrees made by the Court in *Scotland* for or in the course of the Winding up of a Company shall be enforced in *England* and *Ireland*, and Orders made by the Court in *Ireland* for or in the course of winding up a Company shall be enforced in

Order made
in *England*
to be en-
forced in
Scotland
and *Ire-*
land, etc.

England and Scotland by the Courts which would respectively have had Jurisdiction in the Matter of such Company if the Registered Office of the Company were situate in the Division of the United Kingdom where the Order is required to be enforced, and in the same Manner in all respects as if such Order had been made by the Court required to enforce the same in the Case of a Company within its own Jurisdiction.

Mode of
dealing
with Orders
to be en-
forced by
other
Courts.

123. Where any Order, Interlocutor, or Decree made by one Court is required to be enforced by another Court, as herein-before provided,¹ an Office Copy of the Order, Interlocutor, or Decree so made shall be produced to the proper Officer of the Court required to enforce the same, and the production of such Office Copy shall be sufficient Evidence of such Order, Interlocutor, or Decree having been made, and thereupon such last-mentioned Court shall take such Steps in the Matter as may be requisite for enforcing such Order, Interlocutor, or Decree, in the same Manner as if it were the Order, Interlocutor, or Decree of the Court enforcing the same.

¹ Sect. 122, *ante*, p. 49.

Appeals
from
Orders.

124. Rehearings of and Appeals from any Order or Decision made or given in the Matter of the Winding up of a Company by any Court having Jurisdiction under this Act may be had in the same Manner and subject to the same Conditions in and subject to which Appeals may be had from any Order or Decision of the same Court in cases within its ordinary Jurisdiction; subject to this Restriction, that no such Rehearing or Appeal shall be heard unless Notice of the same is given within Three Weeks after any Order complained of has been made, in manner in which Notices of Appeal are ordinarily given according to the Practice of the Court appealed from, unless such Time is extended by the Court of Appeal: Provided that it shall be lawful for the Lord Warden of the Stannaries, by a Special or General Order, to remit at once any Appeal allowed and regularly lodged with him against any Order or

Decision of the Vice Warden made in the Matter of a Winding up to the Court of Appeal in Chancery, which Court shall thereupon hear and determine such Appeal, and have Power to require all such Certificates of the Vice Warden, Records of Proceedings below, Documents, and Papers as the Lord Warden would or might have required upon the Hearing of such Appeal, and to exercise all other the Jurisdiction and Powers of the Lord Warden specified in the Act of Parliament passed in the Eighteenth Year of the Reign of Her present Majesty, Chapter Thirty-two, and any Order so made by the Court of Appeal in Chancery shall be final without any further Appeal.

125. In all Proceedings under this Part of this Act, all Courts, Judges, and Persons judicially acting, and all other Officers, Judicial or Ministerial, of any Court, or employed in enforcing the Process of any Court, shall take judicial Notice¹ of the Signature of any Officer of the Courts of Chancery or Bankruptcy in *England* or in *Ireland*,² or of the Court of Session in *Scotland*, or of the Registrar of the Court of the Vice Warden of the Stannaries, and also of the official Seal or Stamp of the several Offices of the Courts of Chancery or Bankruptcy in *England* or *Ireland*, or of the Court of Session in *Scotland*, or of the Court of the Vice Warden of the Stannaries, when such Seal or Stamp is appended to or impressed on any Document made, issued, or signed under the Provisions of this Part of the Act, or any official Copy thereof.

Judicial
Notice to be
taken of
Signature
of Officers,
etc.

¹ And of orders of the Board of Trade, rule 198, *post* Appendix.

126. [The Commissioners of the Court of Bankruptcy and¹] the Judges of the County Courts in *England* who sit at Places more than Twenty Miles from the General Post Office, and the Commissioners of Bankruptcy and the Assistant Barristers and Recorders in *Ireland*, and the Sheriffs of Counties in *Scotland*, shall be Commissioners for the Purpose of taking Evidence under this Act in Cases where any Company is wound up in any Part of the United Kingdom, and it shall be lawful for the Court to refer the whole or any Part of the Examination of any Witnesses under this Act to

Special
Commissioners
for
taking Evidence.

any Person hereby appointed Commissioner, although such Commissioner is out of the Jurisdiction of the Court that made the Order or Decree for winding up the Company; and every such Commissioner shall, in addition to any Power of summoning and examining Witnesses, and requiring the Production or Delivery of Documents, and certifying or punishing Defaults by Witnesses, which he might lawfully exercise as a [Commissioner of the Court of Bankruptcy,¹] Judge of a County Court, Commissioner of Bankrupt, Assistant Barrister, or Recorder, or as a Sheriff of the County, have in the Matter so referred to him all the same Powers of summoning and examining Witnesses, and requiring the Production or Delivery of Documents, and punishing Defaults by Witnesses, and allowing Costs and Charges and Expenses to Witnesses, as the Court which made the Order for winding up the Company has; and the Examination so taken shall be returned or reported to such last-mentioned Court in such Manner as it directs.

¹ Repealed by the Statute Law Revision Act, 1875.

Court may order the Examination of Persons in Scotland.

127. The Court may direct the Examination in *Scotland* of any Person for the Time being in *Scotland*, whether a Contributory of the Company or not, in regard to the Estate, Dealings, or Affairs of any Company in the course of being wound up, or in regard to the Estate, Dealings, or Affairs of any person being a Contributory of the Company, so far as the Company may be interested therein by reason of his being such Contributory, and the Order or Commission to take such Examination shall be directed to the Sheriff of the County in which the Person to be examined is residing or happens to be for the time, and the Sheriff shall summon such Person to appear before him at a Time and Place to be specified in the Summons for Examination upon Oath as a Witness or as a Haver, and to produce any Books, Papers, Deeds, or Documents called for which may be in his Possession or Power, and the Sheriff may take such Examination

either orally or upon written Interrogatories, and shall report the same in Writing in the usual Form to the Court, and shall transmit with such Report the Books, Papers, Deeds, or Documents produced, if the Originals thereof are required and specified by the Order, or otherwise such Copies thereof or Extracts therefrom, authenticated by the Sheriff, as may be necessary; and in case any Person so summoned fails to appear at the Time and Place specified, or appearing refuses to be examined or to make the Production required, the Sheriff shall proceed against such Person as a Witness or Haver duly cited, and failing to appear or refusing to give Evidence or make Production may be proceeded against by the Law of *Scotland*; and the Sheriff shall be entitled to such and the like Fees, and the Witness shall be entitled to such and the like Allowances, as Sheriffs when acting as Commissioners under Appointment from the Court of Session and as Witnesses and Havers are entitled to in the like Cases according to the Law and Practice of *Scotland*: If any Objection is stated to the Sheriff by the Witness, either on the Ground of his Incompetency as a Witness, or as to the Production required to be made, or on any other Ground whatever, the Sheriff may, if he thinks fit, report such Objection to the Court, and suspend the Examination of such Witness until such Objection has been disposed of by the Court.

128. Any Affidavit, Affirmation, or Declaration required to be sworn or made under the Provisions or for the Purposes of this Part of this Act may be lawfully sworn or made in *Great Britain* or *Ireland*, or in any Colony, Island, Plantation, or Place under the Dominion of Her Majesty in Foreign Parts, before any Court, Judge, or Person lawfully authorized to take and receive Affidavits, Affirmations, or Declarations, or before any of Her Majesty's Consuls or Vice Consuls in any Foreign Parts out of Her Majesty's Dominions, and all Courts, Judges, Justices, Commissioners, and Persons acting judicially shall take judicial Notice of the Seal or Stamp or Signature (as the Case may be)

Affidavits,
etc., may be
sworn, etc.,
before any
competent
Court or
Person.

of any such Court, Judge, Person, Consul, or Vice Consul attached, appended, or subscribed to any such Affidavit, Affirmation, or Declaration, or to any other Document to be used for the Purposes of this Part of this Act.

Voluntary Winding up of Company.

Circumstances under which Company may be wound up voluntarily.

129. A Company¹ under this Act may be wound up voluntarily,

- (1.) Whenever the Period, if any, fixed for the Duration of the Company by the Articles of Association expires, or whenever the Event, if any, occurs, upon the Occurrence of which it is provided by the Articles of Association that the Company is to be dissolved, and the Company in General Meeting has passed a Resolution requiring the Company to be wound up voluntarily:
- (2.) Whenever the Company has passed a Special Resolution² requiring the Company to be wound up voluntarily:
- (3.) Whenever the Company has passed an Extraordinary³ Resolution to the Effect that it has been proved to their Satisfaction that the Company cannot by reason of its Liabilities continue its Business, and that it is advisable to wind up the same:

Definition of Extraordinary Resolution.

[For the Purposes of this Act any Resolution shall be deemed to be extraordinary which is passed in such Manner as would, if it had been confirmed by a subsequent Meeting, have constituted a Special Resolution as herein-before defined.⁴]

¹ But not an unregistered Company, Sect. 199 (2), *post* p. 85.

² As to passing of Special Resolutions, *see* Sect. 51, *ante* p. 23.

³ *See* Companies Act, 1907, Sect. 45, *post* p. 284.

⁴ Repealed by the Companies Act, 1907, Sect. 51 and 4th Schedule, Sect. 45 thereof (*post* p. 284) being substituted.

Commencement of voluntary Winding up.

130. A voluntary Winding up shall be deemed to commence at the Time of the passing of the Resolution authorizing such Winding up.¹

¹ But may be ordered to be continued subject to the supervision of the Court, Sect. 147, *post* p. 60.

131. Whenever a Company is wound up voluntarily the Company shall, from the Date of the Commencement¹ of such Winding up, cease to carry on its Business, except in so far as may be required for the beneficial Winding up thereof, and all Transfers of Shares, except Transfers made to or with the Sanction of the Liquidators, or Alteration in the Status of the Members of the Company, taking place after the Commencement of such Winding up shall be void, but its Corporate State² and all its Corporate Powers shall, notwithstanding it is otherwise provided by its Regulations, continue until the Affairs of the Company are wound up.

Effect of
voluntary
Winding up
on Status of
Company.

¹ See preceding Section.

² As to this, see Sect. 18, *ante* p. 8.

132. Notice of any Special Resolution or Extraordinary Resolution passed for winding up a Company voluntarily shall be given by Advertisement as respects Companies registered in *England* in the *London Gazette*, as respects Companies registered in *Scotland* in the *Edinburgh Gazette*, and as respects Companies registered in *Ireland* in the *Dublin Gazette*.

Notice of
Resolution
to wind up
voluntarily.

133. The following Consequences shall ensue upon the voluntary Winding up of a Company :

Consequences of
voluntary
Winding
up.

- (1.) The Property of the Company shall be applied in satisfaction of its Liabilities *pari passu*, and, subject thereto, shall, unless it be otherwise provided by the Regulations of the Company, be distributed amongst the Members according to their Rights and Interests in the Company:¹
- (2.) Liquidators shall be appointed for the Purpose of winding up the affairs of the Company and distributing the Property :
- (3.) The Company in General Meeting shall appoint such Persons or Person as it thinks fit to be Liquidators or a Liquidator² and may fix the Remuneration to be paid to them or him :
- (4.) If One Person only is appointed, all the Pro-

visions herein contained in reference to several Liquidators shall apply to him :

- (5.) Upon the Appointment of Liquidators all the Power of the Directors shall cease, except in so far as the Company in General Meeting or the Liquidators may sanction the Continuance of such Powers :
- (6.) When several Liquidators are appointed, every Power hereby given may be exercised by such One or more of them as may be determined at the Time of their Appointment, or in Default of such Determination by any Number not less than Two :
- (7.) The Liquidators may, without the Sanction of the Court, exercise all Powers by this Act given to the Official Liquidator :³
- (8.) The Liquidators may exercise the Powers herein-before given to the Court of settling the List of Contributories⁴ of the Company, and any List so settled shall be *prima facie* Evidence of the Liability of the Persons named therein to be Contributories :
- (9.) The Liquidators may at any Time after the passing of the Resolution for winding up the Company, and before they have ascertained the Sufficiency of the Assets of the Company, call on all or any of the Contributories for the Time being settled on the List of Contributories to the Extent of their Liability to pay all or any Sums they deem necessary to satisfy the Debts and Liabilities of the Company, and the Costs, Charges, and Expenses of winding it up, and for the Adjustment of the Rights of the Contributories amongst themselves, and the Liquidators may in making a Call take into consideration the Probability that some of the Contributories upon whom the same is made may partly or wholly fail to pay their respective Portions of the same :
- (10.) The Liquidators shall pay the Debts of the

Company, and adjust the Rights of the Contributors amongst themselves.⁵

¹ Sect. 38, *ante* p. 17.

² He must file notice of his appointment within twenty-one days, Companies Act, 1907, Sect. 26, *post* p. 274, and the creditors may apply to the Court to appoint another Liquidator instead of or in addition to the Company's Liquidator, Companies Act, 1907, Sect. 27, *post* p. 275.

³ Sect. 95, *ante* p. 40.

⁴ Sect. 98, *ante* p. 42.

⁵ Sect. 38 (7), *ante* p. 18.

134. Where a Company limited by Guarantee, and having a Capital divided into Shares,¹ is being wound up voluntarily, any Share Capital that may not have been called up shall be deemed to be Assets of the Company and to be a Specialty Debt² due from each Member to the Company to the Extent of any sums that may be unpaid on any Shares held by him, and payable at such Time as may be appointed by the Liquidators.

Effect of Winding up on Share Capital of Company limited by Guarantee.

¹ But see now the Companies Act, 1900, Sect. 27, *post* p. 237.

² Sect. 75, *ante* p. 32.

135. A Company about to be wound up voluntarily, or in the course of being wound up voluntarily, may, by an Extraordinary Resolution,¹ delegate to its Creditors, or to any Committee of its Creditors, the Power of appointing Liquidators or any of them, and supplying any Vacancies in the Appointment of Liquidators, or may by a like Resolution enter into any Arrangement with respect to the Powers to be exercised by the Liquidators, and the Manner in which they are to be exercised; and any Act done by the Creditors in pursuance of such delegated Power shall have the same Effect as if it had been done by the Company.

Power of Company to delegate Authority to appoint Liquidators, etc.

¹ Defined in Companies Act, 1907, Sect. 45, *post* p. .

136.¹ Any Arrangement entered into between a Company about to be wound up voluntarily, or in the course of being wound up voluntarily, and its Creditors, shall be binding on the Company if sanctioned by an Extraordinary Resolution,² and on the Creditors if acceded to by Three Fourths in Number and Value of the Creditors, subject to such Right of Appeal as is herein-after mentioned.³

Arrangement when binding on Creditors.

¹ See also the Joint Stock Companies Arrangement Act, 1870, Sect. 2, *post* p. 159.

² Defined in Sect. 129, *ante* p. 54.

³ Next Section,

Power of
Creditor or
Contribu-
tory to
Appeal.

137. Any Creditor or Contributory of a Company that has in manner aforesaid¹ entered into any Arrangement with its Creditors may within Three Weeks from the Date of the Completion of such Arrangement, appeal to the Court against such Arrangement, and the Court may thereupon, as it thinks just, amend, vary, or confirm the same.

¹ In previous Section.

Power for
Liquidators
or Contribu-
tories in
voluntary
Winding-up
to apply to
Court.

138. Where a Company is being wound up voluntarily the Liquidators or any Contributory¹ of the Company may apply to the Court in *England, Ireland, or Scotland*, or to the Lord Ordinary on the Bills in *Scotland*, in Time of Vacation, to determine any Question arising in the Matter of such Winding up, or to exercise, as respects the enforcing of Calls, or in respect of any other Matter, all or any of the Powers which the Court might exercise if the Company were being wound up by the Court; and the Court or Lord Ordinary, in the Case aforesaid, if satisfied that the Determination of such Question, or the required Exercise of Power, will be just and beneficial, may accede, wholly or partially, to such Application, on such Terms and subject to such Conditions as the Court thinks fit, or it may make such other Order, Interlocutor, or Decree on such Application as the Court thinks just.

¹ Or any Creditor. The Companies Act, 1900, Sect. 25, *post* p. 236. See also Companies Act, 1907, Sect. 27 (2), p. 275.

Power of
Liquidators
to call
General
Meetings.

139. Where a Company is being wound up voluntarily the Liquidators may from Time to Time, during the Continuance of such Winding up, summon General Meetings of the Company for the Purpose of obtaining the Sanction of the Company by Special Resolution¹ or Extraordinary Resolution,² or for any other Purposes they think fit; and in the event of the Winding up continuing for more than One Year, the Liquidators shall summon a General Meeting of the Company at the End of the First Year, and of each succeeding Year from the Commencement of the Winding up, or as soon thereafter as may be convenient, and shall

lay before such Meeting an Account showing their Acts and Dealings, and the Manner in which the Winding up has been conducted during the preceding Year.

¹ Sect. 51, *ante* p. 23.

² Companies Act, 1907, Sect. 45, *post* p. 284.

140. If any Vacancy occurs in the Office of Liquidators appointed by the Company, by Death, Resignation, or otherwise, the Company in General Meeting may, subject to any Arrangement they may have entered into with their Creditors,¹ fill up such Vacancy, and a General Meeting for the Purpose of filling up such Vacancy may be convened by the continuing Liquidators, if any, or by any Contributory of the Company, and shall be deemed to have been duly held if held in manner prescribed by the Regulations of the Company, or in such other Manner as may, on Application by the continuing Liquidator, if any, or by any Contributory of the Company, be determined by the Court.

Power to fill up Vacancy in Liquidators.

¹ Sect. 135, *ante* p. 57.

141. If from any Cause whatever there is no Liquidator acting in the Case of a voluntary Winding up, the Court may, on the Application of a Contributory, appoint a Liquidator or Liquidators; the Court may also, on due Cause shown,¹ remove any Liquidator, and appoint another Liquidator to act in the Matter of a voluntary Winding up.

Power of Court to appoint Liquidators

¹ Or on the application of Creditors assembled in meeting, Companies Act, 1907, Sect. 27 (2), *post* p. 275.

142. As soon as the Affairs of the Company are fully wound up, the Liquidators shall make up an Account showing the Manner in which such Winding up has been conducted, and the Property of the Company disposed of; and thereupon they shall call a General Meeting of the Company for the Purpose of having the Account laid before them, and hearing any Explanation that may be given by the Liquidators: The Meeting shall be called by Advertisement, specifying the Time, Place, and Object of such Meeting; and such Advertisement shall be published One Month at least previously to the Meeting, as respects Companies registered in *England* in the London Gazette, and as respects Companies registered in Scotland in the *Edin-*

Liquidators on Conclusion of Winding up to make up an Account and lay it before a General Meeting.

burgh Gazette, and as respects Companies registered in *Ireland* in the *Dublin Gazette*.

Liquidators
to report
Meeting to
Registrar
and Com-
pany to be
deemed
dissolved
at the Ex-
piration of
Three
Months.

143.¹ [Within one week after such meeting.²] The Liquidators shall make a Return to the Registrar of such Meeting having been held, and of the Date at which the same was held. [The Registrar on receiving such return shall forthwith register it], and on the Expiration of Three Months from the Date of the Registration of such Return the Company shall be deemed to be dissolved.³ If the Liquidators make Default in making such Return to the Registrar they shall incur a Penalty⁴ not exceeding Five Pounds for every Day during which such Default continues.

¹ The words in brackets were inserted by the Companies Act, 1907, Sect. 50 and 3rd Schedule, *post* p. 290.

² *I.e.*, specified in preceding Section.

³ But dissolution may be deferred on the application of a person interested, Companies Act, 1907, Sect. 31 (1), *post* p. 277.

⁴ Recoverable summarily, Companies Act, 1907, Sect. 49, *post* p. 285.

Costs of
voluntary
Liquidation.

144. All Costs, Charges, and Expenses properly incurred in the voluntary Winding up of a Company, including the Remuneration of the Liquidators, shall be payable out of the Assets of the Company in priority to all other Claims.

Creditor
may insist
on Winding
up by Court.

145. The voluntary Winding up of a Company shall not be a Bar to the Right of any Creditor¹ of such Company to have the same wound up² by the Court, if the Court is of opinion that the Rights of such Creditor will be prejudiced by a voluntary Winding up.

¹ Who may also apply to the Court under Sect. 138, *ante* p. 58.

² Or under the supervision of the Court, Sect. 147, *post* p. .

Power of
Court to
adopt Pro-
ceedings
taken in the
voluntary
Winding
up.

146. Where a Company is in course of being wound up voluntarily; and Proceedings¹ are taken for the Purpose of having the same wound up by the Court, the Court may, if it thinks fit, notwithstanding that it makes an Order directing the Company to be wound up by the Court, provide in such Order or in any other Order for the Adoption of all or any of the Proceedings taken in the course of the voluntary Winding up.

¹ As specified in preceding Section.

Winding up Subject to the Supervision of the Court.

Power of
Court to
direct vol-
untary
Winding up
to continue
subject to
Supervision
of the Court.

147. When a Resolution¹ has been passed by a Company to wind up voluntarily, the Court may make an Order directing that the voluntary Winding up

should continue, but subject to such supervision of the Court, and with such Liberty for Creditors, Contributories, or others to apply to the Court, and generally upon such Terms and subject to such Conditions as the Court thinks just.

¹ Sect. 129, *ante* p. 54.

148. A Petition,¹ praying wholly or in part that a voluntary Winding-up should continue, but subject to the Supervision of the Court, and which Winding up is herein-after referred to as a Winding up subject to the Supervision of the Court, shall, for the Purpose of giving Jurisdiction to the Court over Suits and Actions, be deemed to be a Petition for winding up² the Company by the Court.

Effect of petition for continuance of winding up subject to Supervision.

¹ Rules 25 to 30, *post* Appendix.

² Sect. 85, *ante* p. 37.

149. The Court may, in determining whether a Company is to be wound up altogether by the Court or subject to the Supervision of the Court, in the Appointment of Liquidator or Liquidators, and in all other Matters relating to the Winding-up subject to Supervision, have regard to the Wishes of the Creditors or Contributories as proved to it by any sufficient Evidence, and may direct Meetings¹ of the Creditors or Contributories to be summoned, held, and regulated in such Manner as the Court directs, for the Purpose of ascertaining their Wishes, and may appoint a Person to act as Chairman of any such Meeting, and to report the Result of such Meeting to the Court: In the Case of Creditors, regard shall be had to the Value of the Debts due to each Creditor, and in the Case of Contributories to the Number of Votes conferred on each Contributory by the Regulations of the Company.

Court may have regard to Wishes of Creditors.

¹ The Companies (Winding-up) Act, 1890, Sect. 6, *post* p. 182, schedule thereto, *post* p. 200, and rules 50 to 52, *post* Appendix.

150. Where any Order¹ is made by the Court for a Winding up subject to the Supervision of the Court, the Court may, in such Order or in any subsequent Order, appoint any additional Liquidator or Liquidators; and any Liquidators so appointed by the Court

Power to Court to appoint additional Liquidators in Winding up subject to Supervision.

shall have the same Powers, be subject to the same Obligations, and in all respects stand in the same Position as if they had been appointed to by the Company.² The Court may from Time to Time remove any Liquidators so appointed by the Court, and fill up any Vacancy occasioned by such Removal, or by Death or Resignation.

¹ Sect. 147, *ante* p. 60.

² Sect. 133, *ante* p. 55, also Companies Act, 1907, Sects. 26, 27, *post* p. 274.

Effect of
Order of
Court for
winding
up subject
to Super-
vision.

151. Where an Order¹ is made for a Winding up subject to the Supervision of the Court, the Liquidators appointed to conduct such Winding up may, subject to any Restrictions imposed by the Court, exercise all their Powers, without the Sanction or Intervention of the Court, in the same Manner as if the Company were being wound up altogether voluntarily; but, save as aforesaid, any Order made by the Court for a Winding up subject to the Supervision of the Court shall for all Purposes, including the staying of Actions, Suits, and other Proceedings, be deemed to be an Order of the Court for winding up the Company by the Court, and shall confer full Authority on the Court to make Calls,² or to enforce Calls made by the Liquidators, and to exercise all other Powers which it might have exercised if an Order had been made for winding up the Company altogether by the Court; and in the Construction of the Provisions whereby the Court is empowered to direct any Act or Thing to be done to or in favour of the Official Liquidators,³ the Expression Official Liquidators shall be deemed to mean the Liquidators conducting the Winding up subject to the Supervision of the Court.

¹ Sect. 147, *ante* p. 60.

² As to power of Court to make Calls, *see* Sect. 102, *ante* p. 43, and rules 86 to 90, *post* Appendix.

³ Now called Official Receiver, Companies (Winding-up) Act, 1890, Sect. 4 (1, 2), *post* p. 180.

Appoint-
ment in
certain
Cases of
voluntary
Liquidators
the Official
Liquidators.

152. Where an Order¹ has been made for the Winding up of a Company subject to the Supervision of the Court, and such Order is afterwards superseded by an Order² directing the Company to be wound up compulsorily, the Court may in such last-mentioned

Order, or in any subsequent Order, appoint the voluntary Liquidators or any of them, either provisionally or permanently, and either with or without the Addition of any other Persons, to be Official Liquidators.³

¹ Sect. 147, *ante* p. 60.

² Sect. 79, *ante* p. 34.

³ Now "Liquidator," Companies (Winding-up) Act, 1890, Sect. 4 (3), *post* p. 180.

Supplemental Provisions.

153. Where any Company is being wound up by the Court or subject to the Supervision of the Court, all Dispositions of the Property, Effects, and Things in Action of the Company, and every Transfer of Shares, or Alteration in the Status of the Members of the Company, made between the Commencement¹ of the Winding up and the Order for winding up, shall, unless the Court otherwise orders, be void.

Dispositions of Property, etc., after the Commencement of the Winding up to be void.

¹ Sect. 84, *ante* p. 37, where Company is being wound up by Court; Sect. 180, *ante* p. 54, where under Supervision of the Court.

154. Where any Company is being wound up, all Books, Accounts, and Documents of the Company and of the Liquidators shall, as between the Contributories of the Company, be *prima facie* Evidence of the Truth of all Matters purporting to be therein recorded.

The Books of the Company to be Evidence.

155. Where any Company has been wound up under this Act and is about to be dissolved, the Books, Accounts, and Documents of the Company and of the Liquidators may be disposed of in the following Way; that is to say, where the Company has been wound up by or subject to the Supervision of the Court, in such way as the Court directs, and where the Company has been wound up voluntarily, in such way as the Company by an Extraordinary¹ Resolution directs; but after the Lapse of Five Years from the Date of such Dissolution, no responsibility shall rest on the Company or the Liquidators, or any one to whom the Custody of such Books, Accounts, and Documents has

Disposal of Books, Accounts, and Documents of the Company.

been committed, by reason that the same or any of them cannot be made forthcoming to any Party or Parties claiming to be interested therein.

¹ Companies Act, 1907, Sect. 45, *post* p. 284.

Inspection
of Books.

156. Where an Order has been made for winding up a Company by the Court or subject to the Supervision of the Court, the Court may make such Order for the Inspection by the Creditors and Contributories of the Company of its Books and Papers as the Court thinks just, and any Books and Papers in the Possession of the Company may be inspected by Creditors or Contributories in conformity with the Order of the Court, but not further or otherwise.

Power of
Assignee to
sue and be
sued.

157. Any Person to whom any Thing in Action belonging to the Company is assigned in pursuance of this Act¹ may bring or defend any Action or Suit relating to such Thing in Action in his own Name.

¹ Sect. 95, *ante* p. 40, and as to unregistered Companies Sect. 203, *post* p. 89.

Debts and
Claims of
all Descrip-
tions to be
proved.

158. In the event of any Company being wound up under this Act, all Debts¹ payable on a Contingency, and all Claims against the Company, present or future, certain or contingent, ascertained or sounding only in Damages, shall be admissible as Proof against the Company, a just Estimate being made, so far as is possible, of the Value of all such Debts or Claims as may be subject to any Contingency or sound only in Damages, or for some other Reason do not bear a certain Value.

¹ See Companies Act, 1907, Sect. 28, *post* p. 276.

Power to
make Com-
promises,
etc., with
Creditors
may be
sanctioned.

159. The Liquidators may, with the Sanction of the Court, where the Company is being wound up by the Court or subject to the Supervision of the Court, and with the Sanction¹ of an Extraordinary Resolution of the Company where the Company is being wound up altogether voluntarily, pay any Classes of Creditors in full, or make such Compromise or other Arrangement² as the Liquidators may deem expedient with Creditors or Persons claiming to be Creditors, or Persons having or alleging themselves to have any Claim, present or future, certain or contingent,³ ascertained or sounding

only in Damages against the Company, or whereby the Company may be rendered liable.

¹ Sect. 139, *ante* p. 58.

² As to such Arrangements, *see* Sect. 136, *ante* p. 57, and also the Joint Stock Companies Arrangement Act, 1870, Sect. 2, *post* p. 159, and also Rule 77, Appendix.

³ And *see* Companies Act, 1907, Sect. 28, *post* p. 276.

160. The Liquidators may, with the Sanction of the Court where the Company is being wound up by the Court or subject to the Supervision of the Court, and with the Sanction ¹ of an Extraordinary Resolution of the Company where the Company is being wound up altogether voluntarily, compromise all Calls and Liabilities to Calls, Debts, and Liabilities capable of resulting in Debts, and all Claims, whether present or future, certain or contingent, ascertained or sounding only in Damages, subsisting or supposed to subsist between the Company and any Contributory or alleged Contributory, or other Debtor or Person apprehending Liability to the Company, and all Questions in any way relating to or affecting the Assets of the Company or the winding up of the Company, upon the Receipt of such Sums, payable at such Times, and generally upon such Terms as may be agreed upon, with Power for the Liquidators to take any Security for the Discharge of such Debts or Liabilities, and to give complete Discharges in respect of all or any such Calls, Debts, or Liabilities.

Power to
compromise
with Con-
tributories
and
Debtors

¹ Sect. 139, *ante* p. 58.

161. Where any Company is proposed to be or is in the course of being wound up altogether voluntarily, and the Whole or a Portion of its Business or Property is proposed to be transferred or sold to another Company, the Liquidators of the first-mentioned Company may, with the Sanction of a Special Resolution ¹ of the Company by whom they were appointed, conferring either a general Authority on the Liquidators, or an Authority in respect of any particular Arrangement, receive in Compensation or part Compensation for such Transfer or Sale Shares, Policies, or other like

Power for
Liquidators
to accept
Shares, etc.,
as a Consi-
deration
for Sale of
Property
to another
Company.

Interests in such other Company, for the Purpose of Distribution amongst the Members of the Company being wound up, or may enter into any other Arrangement whereby the Members of the Company being wound up may, in lieu of receiving Cash, Shares, Policies, or other like Interests, or in addition thereto, participate in the Profits of or receive any other Benefit from the purchasing Company; and any Sale made or Arrangement entered into by the Liquidators in pursuance of this Section shall be binding on the Members of the Company being wound up; subject to this Proviso, that if any Member of the Company being wound up who has not voted in favour of the Special Resolution passed by the Company of which he is a Member at either of the Meetings held for passing the same expresses his Dissent from any such Special Resolution in Writing addressed to the Liquidators or One of them, and left at the Registered Office of the Company not later than Seven Days after the Date of the Meeting at which such Special Resolution was passed, such dissentient Member may require the Liquidators to do One of the following Things as the Liquidators may prefer; that is to say, either to abstain from carrying such Resolution into effect, or to purchase the Interest held by such dissentient Member at a Price to be determined in Manner herein-after mentioned,² such Purchase Money to be paid before the Company is dissolved, and to be raised by the Liquidators in such Manner as may be determined by Special Resolution: No Special Resolution shall be deemed invalid for the Purposes of this Section by reason that it is passed antecedently to or concurrently with any Resolution for winding up the Company, or for appointing Liquidators; but if an Order be made within a Year for winding up the Company by or subject to the Supervision of the Court, such Resolution shall not be of any Validity unless it is sanctioned by the Court.

¹ Sect. 51, *ante* p. 23.

² Next Section.

162. The Price to be paid for the Purchase of the Interest of any dissentient Member¹ may be determined by Agreement, but if the Parties dispute about the same such Dispute shall be settled by Arbitration, and for the Purposes of such Arbitration the Provisions of "The Companies Clauses Consolidation Act, 1845," with respect to the Settlement of Disputes by Arbitration, shall be incorporated with this Act; and in the Construction of such Provisions this Act shall be deemed to be the Special Act, and "the Company" shall mean the Company that is being wound up, and any Appointment by the said incorporated Provisions directed to be made under the Hand of the Secretary, or by any Two of the Directors, may be made under the Hand of the Liquidator, if only One, or any Two or more of the Liquidators if more than One.

Mode of
determin-
ing Price.

¹ Under preceding Section.

163. Where any Company is being wound up by the Court or subject to the Supervision of the Court, any Attachment, Sequestration, Distress, or Execution put in force against the Estate or Effects of the Company after the Commencement of the Winding up shall be void to all Intents.

Certain At-
tachments,
Executions,
etc., after
Commence-
ment of
Winding up
to be void

164. Any such Conveyance, Mortgage, Delivery of Goods, Payment, Execution, or other Act¹ relating to Property as would, if made or done by or against any individual Trader, be deemed in the event of his Bankruptcy to have been made or done by way of undue or fraudulent Preference of the Creditors of such Trader, shall, if made or done by or against any Company, be deemed, in the event of such Company being wound up under this Act, to have been made or done by way of undue or fraudulent Preference of the Creditors of such Company, and shall be invalid accordingly; and for the Purposes of this Section the Presentation of a Petition for winding up a Company shall, in the Case of a Company being wound up by the Court or subject to the Supervision of the Court, and a Resolution for winding up the Company shall,

Fraudulent
Preference.

Transfer of
all Effects
to Trustees
for Benefit
of Creditors
void.

in the Case of a voluntary Winding up, be deemed to correspond with the Act of Bankruptcy, in the Case of an Individual Trader; and any Conveyance or Assignment made by any Company formed under this Act of all its Estate and Effects to Trustees for the Benefit of all its Creditors shall be void to all Intents.

¹ See Companies Act, 1907, Sect. 13, *post* p. 266, as to Avoidance of Floating Charges created within three months of winding up.

Power of
Court to
assess
Damages
against
delinquent
Directors
and Officers.

165.¹ Where in the course of the Winding up of any Company under this Act, it appears that any past or present Director, Manager, Official or other Liquidator, or any Officer of such Company, has misapplied or retained in his own Hands, or become liable or accountable for any Moneys of the Company, or been guilty of any Misfeasance or Breach of Trust in relation to the Company, the Court may, on the Application of any Liquidator, or of any Creditor or Contributory of the Company, notwithstanding that the Offence is one for which the Offender is criminally responsible, examine into the Conduct of such Director, Manager, or other Officer, and compel him to repay any Moneys so misapplied or retained, or for which he has become liable or accountable, together with Interest after such Rate as the Court thinks just, or to contribute such Sums of Money to the Assets of the Company by way of Compensation in respect of such Misapplication, Retainer, Misfeasance, or Breach of Trust, as the Court thinks just.

¹ Repealed by the *Companies (Winding-up) Act*, 1890, and replaced by Sect. 10 of that Act, *post* p. 187.

Penalty on
destruction
or Falsifica-
tion of
Books.

166. If any Director, Officer, or Contributory of any Company wound up under this Act destroys, mutilates, alters, or falsifies any Books, Papers, Writings, or Securities, or makes or is privy to the making of any false or fraudulent Entry in any Register, Book of Account, or other Document belonging to the Company with Intent to defraud or deceive any Person, every Person so offending shall be deemed to be guilty of a Misdemeanor, and upon being convicted shall be liable to Imprisonment for any Term not exceeding Two Years, with or without hard labour.¹

Prosecu-
tion of
delinquent
Directors in
the Case of
winding up
by Court.

¹ See also the Larceny Act, 1861 (24 & 25 Vict., c. 96), Sects. 82, 83, 84, *post* Appendix, and the Companies Act, 1900, Sect. 28, *post* p. 237.

167. Where any Order is made for winding up a Company by the Court or subject to the Supervision of the Court, if it appear in the course of such Wind-

ing up that any past or present Director, Manager, Officer, or Member of such Company has been guilty of any Offence in relation to the Company for which he is criminally responsible, the Court may, on the Application of any Person interested in such Winding up, or of its own Motion, direct the Official Liquidators, or the Liquidators (as the Case may be,) to institute and conduct a Prosecution or Prosecutions for such Offence, and may order the Costs and Expenses to be paid out of the Assets of the Company.

168. Where a Company is being wound up altogether voluntarily, if it appear to the Liquidators, conducting such Winding up that any past or present Director, Manager, Officer, or Member of such Company has been guilty of any Offence in relation to the Company for which he is criminally responsible, it shall be lawful for the Liquidators, with the previous Sanction of the Court, to prosecute such Offender, and all Expenses properly incurred by them in such Prosecution shall be payable out of the Assets of the Company in priority to all other Liabilities.

Prosecution of delinquent Directors, etc., in case of voluntary Winding up.

169. If any Person, upon any Examination upon Oath or Affirmation authorized under this Act, or in any Affidavit, Deposition, or solemn Affirmation in or about the Winding up of any Company under this Act, or otherwise in or about any Matter arising under this Act, wilfully and corruptly gives false Evidence, he shall, upon Conviction, be liable to the Penalties of wilful Perjury.¹

Penalties for giving false evidence.

¹ See 2 Geo. II., c. 25, s. 2, and 54 & 55 Vict., c. 69.

Power of Courts to make Rules.

170. *Repealed by the Statute Law Revision Act, 1881.*

171. In Scotland the Court of Session may make such Rules concerning the Mode of Winding up as may be necessary by Act of Sederunt; but, until such Rules are made, the general Practice of the Court of Session in Suits pending in such Court shall, so far as

Power of Court of Session in Scotland to make Rules.

the same is applicable, and not inconsistent with this Act, apply to all Proceedings for winding up a Company, and Official Liquidators shall in all respects be considered as possessing the same Powers as any Trustee on a Bankrupt Estate.

Power to
make Rules
in Stannaries
Court.

172. The Vice Warden of the Stannaries may from Time to Time, with the Consent provided for by Section Twenty-three of the Act of Eighteenth of *Victoria*, Chapter Thirty-two, make Rules for carrying into Effect the Powers conferred by this Act upon the Court of the Vice Warden, but, subject to such Rules, the general Practice of the said Court and of the Registrar's Office in the said Court, including the present Practice of the said Court in winding up Companies, may be applied to all Proceedings under this Act; the said Vice Warden may likewise, with the same Consent, make from Time to Time Rules for specifying the Fees to be taken in his said Court in Proceedings under this Act; and any Rules so made shall be of the same Force as if they had been enacted in the Body of this Act; and the Fees paid in respect of Proceeding taken under this Act, including Fees taken under "The Joint Stock Companies Act, 1856," in the Matter of winding up Companies, shall be applied exclusively towards Payment of such additional Officers, or such Increase of the Salaries of existing Officers, or Pensions to retired Officers, or such other needful Expenses of the Court, as the Lord Warden of the Stannaries shall from Time to Time, on the Application of the Vice Warden or otherwise, think fit to direct, sanction, or assign, and meanwhile shall be kept as a separate Fund apart from the ordinary Fees of the Court arising from other Business to await such Direction and Order of the Lord Warden herein, and to accumulate by Investment in Government Securities until the whole shall have been so appropriated.

Fees.

Power of
Lord Chan-
cellor of
Ireland to
make Rules.

173. In *Ireland* the Lord Chancellor of *Ireland* may, as respects the Winding up of Companies in *Ireland*, with the Advice and Consent of the Master of the Rolls in *Ireland*, exercise the same Power of

making Rules as is by this Act herein-before given to the Lord Chancellor of *Great Britain*; but until such Rules are made the general Practice of the Court of Chancery in *Ireland*, including the Practice hitherto in use in *Ireland* in winding up Companies, shall, so far as the same is applicable and not inconsistent with this Act, apply to all Proceedings for winding up a Company.

PART V.

REGISTRATION OFFICE.

174. The Registration of Companies under this Act shall be conducted as follows; (that is to say,) Constitu-
tion of
Registra-
tion Office.

- (1.) The Board of Trade may from Time to Time appoint such Registrars, Assistant Registrars, Clerks, and Servants as they may think necessary for the Registration of Companies under this Act, and remove them at Pleasure :
- (2.) The Board of Trade may make such Regulations as they think fit with respect to the Duties to be performed by any such Registrars, Assistant Registrars, Clerks, and Servants as aforesaid :
- (3.) The Board of Trade may from Time to Time determine the Places at which Offices for the Registration of Companies are to be established, so that there be at all Times maintained in each of the Three Parts of the United Kingdom at least One such Office, and that no Company shall be registered except at an Office within that Part of the United Kingdom in which by the Memorandum of Association the Registered Office of the Company is declared to be established; and the Board may require that the Registrar's Office of the Court of the Vice Warden of the Stannaries shall be One of the

Offices for the Registration of Companies formed for working Mines within the Jurisdiction of the Court:

- (4.) The Board of Trade may from Time to Time direct a Seal or Seals to be prepared for the Authentication of any Documents required for or connected with the Registration of Companies:
- (5.) Every Person may inspect the Documents kept by the Registrar of Joint Stock Companies; and there shall be paid for such Inspection such Fees as may be appointed by the Board of Trade, not exceeding One Shilling for each Inspection; and any Person may require a Certificate¹ of the Incorporation of any Company, or a Copy or Extract¹ of any other Document or any Part of any other Document, to be certified by the Registrar; and there shall be paid for such Certificate of Incorporation, certified Copy, or Extract such Fees² as the Board of Trade may appoint, not exceeding Five Shillings for the Certificate of Incorporation, and not exceeding Sixpence for each Folio of such Copy or Extract, or in *Scotland* for each Sheet of Two hundred Words:

¹ Which shall be evidence. The Companies Act, 1877, Sect. 6, *post* p. 109.

² To be paid by adhesive stamps; see Treasury order of 31st January, 1901, *post* p. 242.

- (6.) The existing Registrar, Assistant Registrars, Clerks, and other Officers and Servants in the Office for the Registration of Joint Stock Companies shall, during the pleasure of the Board of Trade, hold the Offices and receive the Salaries hitherto held and received by them, but they shall in the Execution of their Duties conform to any Regulations that may be issued by the Board of Trade:
- (7.) There shall be paid to any Registrar, Assistant Registrar, Clerk, or Servant that may hereafter

be employed in the Registration of Joint Stock Companies such Salary as the Board of Trade may, with the Sanction of the Commissioners of the Treasury, direct:

- (8.) Whenever any Act is herein directed to be done to or by the Registrar of Joint Stock Companies, such Act shall until the Board of Trade otherwise directs, be done in *England* to or by the existing Registrar of Joint Stock Companies, or in his Absence to or by such Person as the Board of Trade may for the Time being authorize; in *Scotland* to or by the existing Registrar of Joint Stock Companies in *Scotland*; and in *Ireland* to or by the existing Assistant Registrar of Joint Stock Companies for *Ireland*, or by such Person as the Board of Trade may for the Time being authorize in *Scotland* or *Ireland*, in the Absence of the Registrar; but in the event of the Board of Trade altering the Constitution of the existing Registry Office, such Act shall be done to or by such Officer or Officers and at such Place or Places with reference to the local Situation of the Registered Offices of the Companies to be registered as the Board of Trade may appoint.

PART VI.

APPLICATION OF ACT TO COMPANIES REGISTERED UNDER THE JOINT STOCK COMPANIES ACTS.

175. The Expression "Joint Stock Companies Acts" as used in this Act shall mean "The Joint Stock Companies Act, 1856," "The Joint Stock Companies Acts, 1856, 1857," "The Joint Stock Banking Companies Act, 1857," and "The Act to enable Joint Stock Banking Companies to be formed on the Principle of

Joint Stock
Companies
Acts to
mean 19 &
20 Vict. c.
47, 20 & 21
Vict. c. 14,
and 21 & 22
Vict. c. 81,
but not to
include 7 &
8 Vict. c. 110.

Limited Liability," or any One or more of such Acts, as the Case may require; but shall not include the Act passed in the Eighth Year of the Reign of Her present Majesty, Chapter One hundred and ten, and intituled *An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies*.

Application
of Act to
Companies
formed
under Joint
Stock Com-
panies Acts.

176. Subject as herein-after mentioned, this Act, with the Exception of Table A. in the First Schedule, shall apply to Companies formed and registered under the said Joint Stock Companies Acts,¹ or any of them, in the same Manner in the Case of a Limited Company as if such Company had been formed and registered under this Act as a Company Limited by Shares, and in the Case of a Company other than a Limited Company as if such Company had been formed and registered as an Unlimited Company under this Act, with this Qualification, that wherever Reference is made expressly or impliedly to the Date of Registration, such Date shall be deemed to refer to the Date at which such Companies were respectively registered under the said Joint Stock Companies Acts or any of them, and the Power of altering Regulations by Special Resolution given by this Act² shall, in the Case of any Company formed and Registered under the said Joint Stock Companies Acts or any of them, extend to altering any provisions contained in the Table marked B. annexed to "The Joint Stock Companies Act, 1856," and shall also in the Case of an Unlimited Company formed and registered as last aforesaid extend to altering any Regulations relating to the Amount of Capital or its Distribution into Shares, notwithstanding such Regulations are contained in the Memorandum of Association.

¹ Preceding Section.

² Sect. 60, ante p. 22.

Application
of Act to
Companies
formed
under Joint
Stock Com-
panies Acts.

177. This Act shall apply to Companies registered but not formed under the said Joint Stock Companies Acts¹ or any of them, in the same Manner as it is herein-after declared to apply to Companies registered but

not formed under this Act,² with this Qualification, that wherever Reference is made expressly or impliedly to the Date of Registration, such Date shall be deemed to refer to the Date at which such Companies were respectively registered under the said Joint Stock Companies Acts or any of them.

¹ Sect. 175, *ante* p. 73.

² Sect. 196, *post* p. 82.

178. Any Company registered under the said Joint Stock Companies Acts or any of them may cause its Shares to be transferred in Manner hitherto in use, or in such other Manner as the Company may direct. Mode of transferring Shares.

PART VII.

COMPANIES AUTHORIZED TO REGISTER UNDER THIS ACT.

179. The following Regulations shall be observed with respect to the Registration of Companies under this Part of this Act; (that is to say,) Regulations as to Registration of existing Companies.

- (1.) No Company having the Liability of its Members limited by Act of Parliament or Letters Patent, and not being a Joint Stock Company as herein-after defined, shall register under this Act in pursuance of this Part thereof:
- (2.) No Company having the Liability of its Members limited by Act of Parliament or by Letters Patent shall register under this Act in pursuance of this Part thereof as an Unlimited Company, or as a Company limited by Guarantee.
- (3.) No Company that is not a Joint Stock Company as herein-after defined shall in pursuance of this Part of this Act register under this Act as a Company limited by Shares:
- (4.) No Company shall register under this Act in

pursuance of this Part thereof unless an Assent to its so registering is given by a Majority of such of its Members as may be present, personally or by Proxy, in Cases where Proxies are allowed by the Regulations of the Company, at some General Meeting summoned for the Purpose:

- (5.) When a Company not having the Liability of its Members limited by Act of Parliament or Letters Patent is about to register as a Limited Company, the Majority required to assent as aforesaid shall consist of not less than Three Fourths of the Members present, personally or by Proxy, at such last-mentioned General Meeting:
- (6.) Where a Company is about to register as a Company limited by Guarantee, the Assent to its being so registered shall be accompanied by a Resolution declaring that each Member undertakes to contribute to the Assets of the Company, in the event of the same being wound up, during the Time that he is a Member, or within One Year afterwards, for Payment of the Debts and Liabilities of the Company contracted before the Time at which he ceased to be a Member, and of the Costs, Charges, and Expenses of winding up the Company, and for the Adjustment of the Rights of the Contributories amongst themselves, such Amount as may be required, not exceeding a specified Amount:

In computing any Majority under this Section when a Poll is demanded regard shall be had to the Number of Votes to which each Member is entitled according to the Regulations of the Company of which he is a Member.

Companies
capable of
being re-
gistered.

180. With the above Exceptions, and subject to the foregoing Regulations,¹ every Company existing at the Time of the Commencement of this Act, including any Company registered under the said Joint Stock

Companies Acts,² consisting of Seven or more Members, and any Company hereafter formed in pursuance of any Act of Parliament other than this Act, or of Letters Patent, or being a Company engaged in working Mines within and subject to the Jurisdiction of the Stannaries, or being otherwise duly constituted by Law, and consisting of Seven or more Members, may at any Time hereafter register itself under this Act as an Unlimited Company, or a Company limited by Shares, or a Company limited by Guarantee; and no such Registration shall be invalid by reason that it has taken place with a view to the Company being wound up.

¹ Preceding Section.

² Sect. 175, *ante* p. 73.

181. For the Purposes of this Part of this Act, so far as the same relates to the Description of Companies empowered to register as Companies limited by Shares, a Joint Stock Company shall be deemed to be a Company having a permanent paid-up or nominal Capital of fixed amount divided into Shares, also of fixed Amount, or held and transferable as Stock, or divided and held partly in one way and partly in the other, and formed on the Principle of having for its Members the Holders of Shares in such Capital, or the Holders of such Stock, and no other Persons; and such Company when registered with Limited Liability under this Act shall be deemed to be a Company limited by Shares.

Definition
of Joint
Stock Com-
pany.

182.¹ No Banking Company claiming to issue Notes in the United Kingdom shall be entitled to Limited Liability in respect of such Issue, but shall continue subject to Unlimited Liability in respect thereof, and, if necessary, the Assets shall be marshalled for the Benefit of the general Creditors, and the Members shall be liable for the whole Amount of the Issue, in Addition to the Sum for which they would be liable as Members of a Limited Company.

Proviso as
to Banking
Company.

¹ Repealed by the *Companies Act, 1879*, and replaced by Sect. 6 of that Act, *post* p. 164.

183. Previously to the Registration in pursuance of this Part of this Act of any Joint Stock Company¹ there

Requisi-
tions for
Registra-
tion by
Companies.

shall be delivered to the Registrar the following Documents; (that is to say,)

- (1.) A List showing the Names, Addresses, and Occupations of all Persons who on a Day named in such List, and not being more than Six clear Days before the Day of Registration were Members of such Company, with the Addition of the Shares held by such Persons respectively, distinguishing, in Cases where such Shares are numbered, each Share by its Number :
- (2.) A Copy of any Act of Parliament, Royal Charter, Letters Patent, Deed of Settlement, Contract of Co-partnery, Cost Book Regulations, or other Instrument constituting or regulating the Company :
- (3.) If any such Joint Stock Company is intended to be registered as a Limited Company, the above List and Copy shall be accompanied by a Statement specifying the following Particulars ; that is to say,
 The nominal Capital of the Company and the Number of Shares into which it is divided :
 The Number of Shares taken and the Amount paid on each Share :
 The name of the Company, with the Addition of the Word " Limited,"² as the last Word thereof :
 With the Addition, in the Case of a Company intended to be registered as a Company limited by Guarantee, of the Resolution declaring the Amount of the Guarantee.

¹ As defined in Sect. 181, *ante* p. 77.

² See Sect. 190, *post* p. 80.

Requisitions for Registration by existing Companies not being Joint Stock Companies.

184. Previously to the Registration in pursuance of this Part of this Act of any Company not being a Joint Stock Company¹ there shall be delivered to the Registrar a List showing the Names, Addresses, and

Occupations of the Directors or other Managers (if any) of the Company, also a Copy of any Act of Parliament, Letters Patent, Deed of Settlement, Contract of Co-partnery, Cost Book Regulations, or other Instrument constituting or regulating the Company, with the Addition, in the Case of a Company intended to be registered as a Company limited by Guarantee, of the Resolution declaring the Amount of Guarantee.

¹ As defined in Sect. 181, *ante* p. 77.

185. Where a Joint Stock Company¹ authorized to register under this Act has had the whole or any Portion of its Capital converted into Stock, such Company shall, as to the Capital so converted, instead of delivering to the Registrar a Statement of Shares, deliver to the Registrar a Statement of the Amount of Stock belonging to the Company, and the Names of the Persons who were Holders of such Stock, on some Day to be named on the Statement, not more than Six clear Days before the Day of Registration.

Power for
Company
to register
Amount of
Stock in-
stead of
Shares.

¹ Sect. 180, *ante* p. 76.

186. The Lists of Members and Directors and any other Particulars relating to the Company hereby required to be delivered to the Registrars shall be verified by a Declaration of the Directors of the Company delivering the same, or any Two of them, or of any Two other principal Officers of the Company, made in pursuance of the Act passed in the Sixth Year of the Reign of His late Majesty King *William* the Fourth, Chapter Sixty-two.

Authentica-
tion of
Statements.

187. The Registrar may require such Evidence as he thinks necessary for the Purpose of satisfying himself whether an existing Company is or not a Joint Stock Company as herein-before defined.¹

Registrar
may require
Evidence as
to Nature of
Company.

¹ Sect. 181, *ante* p. 77.

188. Every Banking Company existing at the Date of the passing of this Act which registers itself as a Limited Company shall, at least Thirty Days previous

On Regis-
tration of
Banking
Company
with Lim-
ited Liab-
ility
Notice to
be given to
Customers.

Offices for the Registration of Companies formed for working Mines within the Jurisdiction of the Court :

- (4.) The Board of Trade may from Time to Time direct a Seal or Seals to be prepared for the Authentication of any Documents required for or connected with the Registration of Companies :
- (5.) Every Person may inspect the Documents kept by the Registrar of Joint Stock Companies ; and there shall be paid for such Inspection such Fees as may be appointed by the Board of Trade, not exceeding One Shilling for each Inspection ; and any Person may require a Certificate¹ of the Incorporation of any Company, or a Copy or Extract¹ of any other Document or any Part of any other Document, to be certified by the Registrar ; and there shall be paid for such Certificate of Incorporation, certified Copy, or Extract such Fees² as the Board of Trade may appoint, not exceeding Five Shillings for the Certificate of Incorporation, and not exceeding Sixpence for each Folio of such Copy or Extract, or in *Scotland* for each Sheet of Two hundred Words :

¹ Which shall be evidence. The Companies Act, 1877, Sect. 6, *post* p. 162.

² To be paid by adhesive stamps ; *see* Treasury order of 31st January, 1901, *post* p. 242.

- (6.) The existing Registrar, Assistant Registrars, Clerks, and other Officers and Servants in the Office for the Registration of Joint Stock Companies shall, during the pleasure of the Board of Trade, hold the Offices and receive the Salaries hitherto held and received by them, but they shall in the Execution of their Duties conform to any Regulations that may be issued by the Board of Trade :
- (7.) There shall be paid to any Registrar, Assistant Registrar, Clerk, or Servant that may hereafter

the Case of a Limited Company, that it is limited, and thereupon such Company shall be incorporated, and shall have perpetual Succession and a Common Seal, with Power to hold Lands; and any Banking Company in *Scotland* so incorporated shall be deemed and taken to be a Bank incorporated, constituted, or established by or under Act of Parliament.

192.¹ A Certificate of Incorporation given at any Time to any Company registered in pursuance of this Part of this Act shall be conclusive Evidence that all the Requisitions herein contained in respect of Registration under this Act have been complied with, and that the Company is authorized to be registered under this Act as a Limited or Unlimited Company, as the Case may be, and the Date of Incorporation mentioned in such Certificate shall be deemed to be the Date at which the Company is incorporated under this Act.

Certificate to be Evidence of Compliance with Act

¹ Repealed by the Companies Act, 1900, and virtually re-enacted by Sect. 1 of that Act, post p. 216.

193. All such Property, Real and Personal, including all Interests and Rights in, to, and out of Property, Real and Personal, and including Obligations and Things in Action, as may belong to or be vested in the Company at the Date of its Registration under this Act, shall on Registration pass to and vest in the Company as incorporated under this Act, for all the Estate and Interest of the Company therein.

Vesting of Property in Company

194. The Registration in pursuance of this Part of this Act of any Company shall not affect or prejudice the Liability of such Company to have enforced against it, or its Right to enforce, any Debt or Obligation incurred, or any Contract entered into, by, to, with, or on behalf of such Company previously to such Registration.

Registration not to affect Obligations incurred previously thereto.

195. All such Actions, Suits, and other Legal Proceedings as may at the Time of the Registration of any Company registered in pursuance of this Part of this Act¹ have been commenced by or against such Company, or the Public Officer or any Member thereof, may be continued in the same Manner as if such Registration had not taken place; nevertheless Exe-

Continuation of existing Actions and Suits.

Limited Liability," or any One or more of such Acts, as the Case may require; but shall not include the Act passed in the Eighth Year of the Reign of Her present Majesty, Chapter One hundred and ten, and intituled *An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies*.

Application
of Act to
Companies
formed
under Joint
Stock Com-
panies Acts.

176. Subject as herein-after mentioned, this Act, with the Exception of Table A. in the First Schedule, shall apply to Companies formed and registered under the said Joint Stock Companies Acts,¹ or any of them, in the same Manner in the Case of a Limited Company as if such Company had been formed and registered under this Act as a Company Limited by Shares, and in the Case of a Company other than a Limited Company as if such Company had been formed and registered as an Unlimited Company under this Act, with this Qualification, that wherever Reference is made expressly or impliedly to the Date of Registration, such Date shall be deemed to refer to the Date at which such Companies were respectively registered under the said Joint Stock Companies Acts or any of them, and the Power of altering Regulations by Special Resolution given by this Act² shall, in the Case of any Company formed and Registered under the said Joint Stock Companies Acts or any of them, extend to altering any provisions contained in the Table marked B. annexed to "The Joint Stock Companies Act, 1856," and shall also in the Case of an Unlimited Company formed and registered as last aforesaid extend to altering any Regulations relating to the Amount of Capital or its Distribution into Shares, notwithstanding such Regulations are contained in the Memorandum of Association.

¹ Preceding Section.

² Sect. 50, *ante* p. 22.

Application
of Act to
Companies
registered
under Joint
Stock Com-
panies Acts.

177. This Act shall apply to Companies registered but not formed under the said Joint Stock Companies Acts¹ or any of them, in the same Manner as it is herein-after declared to apply to Companies registered but

not formed under this Act,² with this Qualification, that wherever Reference is made expressly or impliedly to the Date of Registration, such Date shall be deemed to refer to the Date at which such Companies were respectively registered under the said Joint Stock Companies Acts or any of them.

¹ Sect. 175, *ante* p. 73.

² Sect. 196, *post* p. 82.

178. Any Company registered under the said Joint Stock Companies Acts or any of them may cause its Shares to be transferred in Manner hitherto in use, or in such other Manner as the Company may direct. Mode of transferring Shares.

PART VII.

COMPANIES AUTHORIZED TO REGISTER UNDER THIS ACT.

179. The following Regulations shall be observed with respect to the Registration of Companies under this Part of this Act; (that is to say,) Regulations as to Registration of existing Companies.

- (1.) No Company having the Liability of its Members limited by Act of Parliament or Letters Patent, and not being a Joint Stock Company as herein-after defined, shall register under this Act in pursuance of this Part thereof:
- (2.) No Company having the Liability of its Members limited by Act of Parliament or by Letters Patent shall register under this Act in pursuance of this Part thereof as an Unlimited Company, or as a Company limited by Guarantee.
- (3.) No Company that is not a Joint Stock Company as herein-after defined shall in pursuance of this Part of this Act register under this Act as a Company limited by Shares:
- (4.) No Company shall register under this Act in

But nothing herein contained shall derogate from any Power of altering its Constitution or Regulations which may be vested in any Company registering under this Act in pursuance of this Part thereof by virtue of any Act of Parliament, Deed of Settlement, Contract of Co-partnery, Letters Patent, or other Instrument constituting or regulating the Company.

¹ Sect. 51, *ante* p. 23.

² Sect. 25, *ante* p. 11.

³ See Sect. 47 of the Companies Act, 1867 (*post* p. 153), which was probably also intended to apply to sub-Sect. 4 of this Sect. instead of to sub-Sect. 2.

⁴ Sects. 76, 77, 78, *ante* p. 33.

⁵ See, however, the Companies (Memorandum of Association) Act, 1890, *post* p. 175.

⁶ As required by Sects. 8, 9, 10, *ante* p. 3 *et seq.*

Power of
Court to
restrain
further Pro-
ceedings in
Actions,
etc.

197. The Court may, at any Time after the Presentation of a Petition for winding up a Company registered in pursuance of this Part of this Act, and before making an Order for winding up the Company, upon the Application by Motion of any Creditor of the Company, restrain further Proceedings in any Action, Suit, or legal Proceeding against any Contributory of the Company as well as against the Company as herein-before provided,¹ upon such Terms as the Court thinks fit.

¹ Sect. 85, *ante* p. 37.

After Order
for winding
up Company
no legal
Proceedings
to be taken
without
leave of
Court.

198. Where an Order has been made for winding up a Company registered in pursuance of this Part of the Act, in addition to the Provisions herein-before contained,¹ it is hereby further provided that no Suit, Action, or other legal Proceeding shall be commenced or proceeded with against any Contributory of the Company in respect of any Debt of the Company, except with the Leave of the Court, and subject to such Terms as the Court may impose.

¹ Sect. 87, *ante* p. 37.

PART VIII.

APPLICATION OF ACT TO UNREGISTERED COMPANIES.

199. Subject as herein-after mentioned, any Partnership, Association, or Company, except Railway Companies incorporated by Act of Parliament, consisting of more than Seven Members, and not registered under this Act, and herein-after included under the Term unregistered Company, may be wound up under this Act, and all the Provisions of this Act with respect to winding up shall apply to such Company, with the following Exceptions and Additions:

Winding
up of un-
registered
Companies

- (1.) An unregistered Company shall, for the Purpose of determining the Court having Jurisdiction in the Matter of the Winding up, be deemed to be registered in that Part of the United Kingdom where its principal Place of Business is situate; or if it has a principal place of Business situate in more than One Part of the United Kingdom, then in each Part of the United Kingdom where it has a principal Place of Business; moreover the principal Place of Business of an unregistered Company, or (where it has a principal Place of Business situate in more than One Part of the United Kingdom) such One of its principal Places of Business as is situate in that Part of the United Kingdom in which Proceedings are being instituted, shall for all the Purposes of the winding up of such Company be deemed to be the Registered Office of the Company:¹
- (2.) No unregistered Company shall be wound up under this Act voluntarily or subject to the Supervision of the Court:
- (3.) The Circumstances under which an unregistered Company may be wound up are as follows; (that is to say,)
 - (a.) Whenever the Company is dissolved, or has ceased to carry on Business, or is carrying

on Business only for the Purpose of winding up its Affairs ;

- (b.) Whenever the Company is unable to pay its Debts ;
 - (c.) Whenever the Court is of opinion that it is just and equitable that the Company should be wound up :
- (4.) An unregistered Company shall, for the Purposes of this Act, be deemed to be unable to pay its Debts,
- (a.) Whenever a Creditor to whom the Company is indebted at Law or in Equity, by Assignment or otherwise, in a Sum exceeding Fifty Pounds then due, has served on the Company, by leaving the same at the principal Place of Business of the Company, or by delivering to the Secretary or some Director or principal Officer of the Company, or by otherwise serving the same in such Manner as the Court may approve or direct, a Demand under his Hand requiring the Company to pay the Sum so due, and the Company has for the Space of Three Weeks succeeding the Service of such Demand neglected to pay such Sum, or to secure or compound for the same to the Satisfaction of the Creditor :
 - (b.) Whenever any Action, Suit, or other Proceeding has been instituted against any Member of the Company for any Debt or Demand due, or claimed to be due, from the Company, or from him in his Character of Member of the Company, and Notice in Writing of the Institution of such Action, Suit, or other legal Proceeding having been served upon the Company by leaving the same at the principal Place of Business of the Company, or by delivering it to the Secretary, or some Director, Manager, or

principal Officer of the Company, or by otherwise serving the same in such Manner as the Court may approve or direct, the Company has not within Ten Days after Service of such Notice paid, secured, or compounded for such Debt or Demand, or procured such Action, Suit, or other legal Proceeding to be stayed, or indemnified the Defendant to his reasonable Satisfaction against such Action, Suit, or other legal Proceeding, and against all Costs, Damages, and Expenses to be incurred by him by reason of the same :

- (c.) Whenever, in *England or Ireland*, Execution or other Process issued on a Judgment, Decree, or Order obtained in any Court in favour of any Creditor in any Proceeding at Law or in Equity instituted by such Creditor against the Company, or any Member thereof as such, or against any Person authorized to be sued as nominal Defendant on behalf of the Company, is returned unsatisfied :
- (d.) Whenever, in the Case of an unregistered Company engaged in working Mines within and subject to the Jurisdiction of the Stannaries, a Customary Decree or Order Absolute for the Sale of the Machinery, Materials, and Effects of such Mine has been made in a Creditor's Suit in the Court of the Vice Warden :
- (e.) Whenever, in *Scotland*, the Induciae of a Charge for Payment on an Extract Decree, or an Extract registered Bond, or an Extract registered Protest, have expired without Payment being made :
- (f.) Whenever it is otherwise proved to the Satisfaction of the Court that the Company is unable to pay its Debts.

¹Required by Sect. 89, *ante* p. 18, and *see* the Companies (Winding-up) Act, 1890, Sect. 32 (3), *post* p. 199.

Who to be
deemed
Contribu-
ories in
the event
of Com-
pany being
wound up.

200. In the event of an unregistered Company being wound up every Person shall be deemed to be a Contributory who is liable, at Law or in Equity, to pay or contribute to the Payment of any Debt or Liability of the Company, or to pay or contribute to the Payment of any Sum for the Adjustment of the Rights of the Members amongst themselves, or to pay or contribute to the Payment of the Costs, Charges, and Expenses of winding up the Company, and every such Contributory shall be liable to contribute to the Assets of the Company in the Course of the Winding up all Sums due from him in respect of any such Liability as aforesaid; but in the event of the Death, Bankruptcy, or Insolvency of any Contributory, or Marriage of any Female Contributory, the Provisions herein-before contained with respect to the Personal Representatives, Heirs, and Divisees of a deceased Contributory,¹ and to the Assignees of a bankrupt or insolvent Contributory,² and to the Husband of married Contributories³ shall supply.

¹ Sect. 76, *ante* p. 33.

² Sect. 77, *ante* p. 33.

³ Sect. 78, *ante* p. 33.

Power of
Court to
restrain
further Pro-
ceedings in
actions,
&c.

201. The Court may, at any Time after the Presentation of a Petition for winding up an unregistered Company, and before making an Order for winding up the Company, upon the Application of any Creditor of the Company, restrain further Proceedings in any Action, Suit, or Proceeding against any Contributory of the Company, or against the Company as herein-before provided,¹ upon such Terms as the Court thinks fit.

¹ Sect. 85, *ante* p. 37.

Effect of
Order for
winding up
Company.

202. Where an Order has been made for winding up an unregistered Company in addition to the Provisions¹ herein-before contained in the Case of Companies formed under this Act, it is hereby further provided that no Suit, Action, or other legal Proceeding

shall be commenced or proceeded with against any Contributory of the Company in respect of any Debt of the Company, except with the Leave of the Court, and subject to such Terms as the Court may impose.

¹Sect. 87, *ante* p. 37.

203. If any unregistered Company has no Power to sue and be sued in a common Name, or if for any reason it appears expedient, the Court may by the Order made for winding up such Company, or by any subsequent Order, direct that all such Property, Real and Personal, including all Interest, Claims, and Rights into and out of Property, Real and Personal, and including Things in Action as may belong to or be vested in the Company, or to or in any Person or Persons on trust for or on behalf of the Company or any Part of such Property, is to vest in the Official Liquidator or Official Liquidators by his or their official Name or Names, and thereupon the same or such Part thereof as may be specified in the Order shall vest accordingly, and the Official Liquidator or Official Liquidators may, in his or their Official Name or Names, or in such Name or Names and after giving such Indemnity as the Court directs, bring or defend any Actions, Suits, or other legal Proceeding relating to any Property vested in him or them, or any Actions, Suits, or other legal Proceedings necessary to be brought or defended for the Purposes of effectually winding up the Company and recovering the Property thereof.

Property
may be
vested in
Official
Liquidators, etc.

204. The Provisions made by this Part of the Act with respect to unregistered Companies shall be deemed to be made in addition to and not in restriction of any Provisions¹ herein-before contained with respect to winding up Companies by the Court, and the Court or Official Liquidator may, in addition to anything contained in this Part of the Act, exercise any Powers or do any Act in the Case of unregistered Companies which might be exercised or done by it or him in winding up Companies formed under the Act; but an unregistered Company shall not, except in the event

Provisions
in this Part
of Act
cumulative.

of its being wound up, be deemed to be a Company under this Act, and then only to the Extent provided by this Part of this Act.

¹ Sects. 74 to 128, and Sects. 153 to 173 *ante*.

PART IX.

REPEAL OF ACTS AND TEMPORARY PROVISIONS.

Repeal of
Acts.

205. After the Commencement of this Act there shall be repealed the several Acts specified in the First Part of the Third Schedule hereto, with this Qualification, that so much of the said Acts as is set forth in the Second Part of the said Third Schedule shall be hereby re-enacted and continue in force as if unrepealed.

Saving
Clause as
to Repeal.

206. No Repeal hereby enacted shall affect,

(1.) Anything duly done under any Acts hereby repealed:

(2.) The Incorporation of any Company registered under any Act hereby repealed:

(3.) Any Right or Privilege acquired or Liability incurred under any Act hereby repealed:

(4.) *Repealed by the Statute Law Revision Act, 1875.*

(5.) Table B, in the Schedule annexed to the Joint Stock Companies Act, 1856, or any Part thereof, so far as the same applies to any Company existing at the Time of the Commencement of this Act.

207. *Repealed by the Statute Law Revision Act, 1875.*

Saving of
Convey-
ances, etc.,
made pursu-
ant to any
repealed
Act.

208. Where previously to the Commencement of this Act any Conveyance, Mortgage, or other Deed has been made in pursuance of any Act hereby repealed, such Deed shall be of the same Force as if this Act had not passed, and for the Purposes of such Deed such repealed Act shall be deemed to remain in full Force.

209. Every Insurance Company completely registered under the Act passed in the Eighth Year of the Reign of Her present Majesty, Chapter One hundred and ten, intituled *An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies*, shall on or before the Second Day of November One thousand eight hundred and sixty-two, and every other Company required by any Act hereby repealed to register under the said Joint Stock Companies Acts, or one of such Acts, and which has not so registered, shall, on or before the Expiration of the Thirty-first Day from the Commencement of this Act, register itself as a Company under this Act, in manner and subject to the Regulations herein-before contained,¹ with this Exception, that no Company completely registered under the said Act of the Eighth Year of the Reign of Her present Majesty shall be required to deliver to the Registrar a Copy of its Deed of Settlement; and for the Purpose of enabling such Insurance Companies as are mentioned in this Section to register under this Act, this Act shall be deemed to come into operation immediately on the passing thereof; nevertheless the Registration of such Companies shall not have any Effect until the Time of the Commencement of this Act. No Fees shall be charged in respect of the Registration of any Company required to register by this Section.

Compulsory
Registration
of
certain
Companies.

¹ Sect. 179, *ante* p. 75, and following Sects.

210. If any Company required by the last Section to register under this Act makes Default in complying with the Provisions thereof, then from and after the Day upon which such Company is required to register under this Act, until the Day on which such Company is registered under this Act (which it is empowered to do at any Time), the following Consequences shall ensue; (that is to say,)

Penalty on
any such
Company
not regis-
tering
21 Vict. c.
14. s. 23.

- (1.) The Company shall be incapable of suing either at Law or in Equity, but shall not be incapable of being made a Defendant to a Suit either at Law or in Equity:

- (2.) No Dividend shall be payable to any Shareholder in such Company :
- (3.) Each Director or Manager of the Company shall for each Day during which the Company so being in Default carries on Business incur a Penalty not exceeding Five Pounds, and such Penalty may be recovered by any Person, whether a Shareholder or not in the Company, and be applied by him to his own Use :

Nevertheless, such Default shall not render the Company so being in Default illegal, nor subject it to any Penalty or Disability, other than as specified in this Section ; and Registration under this Act shall cancel any Penalty or Forfeiture, and put an end to any Disability which any Company may have incurred under any Act hereby repealed by reason of its not having registered under the said Joint Stock Companies Acts, 1856, 1857, or One of them.

211 and 212. *Repealed by the Statute Law Revision Act, 1875.*

FIRST SCHEDULE.

TABLE A.

(Revised.)

REGULATIONS FOR MANAGEMENT OF A COMPANY
LIMITED BY SHARES.*Preliminary.*

1. In these regulations, unless the context otherwise requires, expressions¹ defined in the Companies Acts, 1862 to 1900, or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined; and words importing the singular number only shall include the plural number, and *vice versa*, and words importing the masculine gender shall include the feminine, and words importing persons shall include corporations.

¹ See under "Definitions" in index, *post* p.

Business.

2. The directors shall have regard to the restrictions on the commencement of business imposed by section 6¹ of the Companies Act, 1900, if, and so far as, such restrictions shall be binding upon the company.

¹ *Post* p. 220.

Shares.

3. Subject to the provisions, if any, in that behalf of the memorandum¹ of association of the company, and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company may be issued with such preferred, deferred, or other special rights, or such restrictions, whether in regard to dividend, voting, return of capital or otherwise, as the company may from time to time by special resolution² determine.

¹ Companies Act, 1862, Sects. 8 and 9, *ante* pp. 3, 4; and Sect. 12, *ante* p. 5.

² Companies Act, 1862, Sect. 51, *ante* p. 23.

4.¹ If at any time the capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary² resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations³ relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class.

¹ See new Companies Act, 1907, Sect. 39, *post* p. 282.

² Companies Act, 1907, Sect. 45, *post* p. 284.

³ Clauses 45 to 48, *post* pp. 105, 106.

5. No share shall be offered to the public for subscription except upon the terms that the amount payable on application shall be at least 5 per cent. of the nominal amount of the share ; and the directors shall, as regards any allotment of shares, duly comply with such of the provisions of the Companies Act, 1900, sections 4¹ and 7,² as may be applicable thereto.

¹ *Ante* p. 218.

² *Ante* p. 221.

6. Every person whose name is entered as a member in the register¹ of members shall, without payment,² be entitled to a certificate³ under the common seal of the company specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

¹ Companies Act, 1862, Sect. 25, *ante* p. 11.

² And within two months of allotment or transfer, Companies Act, 1907, Sect. 5, *post* p. 256.

³ Companies Act, 1862, Sect. 31, *ante* p. 14.

7. If a share certificate ¹ is defaced, lost, or destroyed, it may be renewed on payment of such fee, if any, not exceeding one shilling, and on such terms, if any, as to evidence and indemnity as the directors think fit.

¹ Companies Act, 1862, Sect. 81, *ante* p. 14.

8. No part of the funds of the company shall be employed in the purchase of, or in loans upon the security of, the company's shares.

Lien.

9. The company shall have a lien on every share (not being a fully-paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of such share, and the company shall also have a lien on all shares (other than fully-paid shares) standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause. The company's lien, if any, on a share shall extend to all dividends payable thereon.

10. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled by reason of his death or bankruptcy to the share.

11. The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently pay-

able as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale. The purchaser shall be registered as the holder of the shares, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

*Calls on Shares.*¹

12. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares, provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the company at the time or times so specified the amount called on his shares.

¹ Companies Act, 1867, Sect. 24, *ante* p. 152.

13. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

14. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of £5 per cent. per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of such interest wholly or in part.

15. The provisions of these regulations as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

16. The directors may make arrangements on the issue of shares for a difference between the holders in

¹ Companies Act, 1867, Sect. 24 (1), *post* p. 152.

Transfer¹ and Transmission of Shares.

² Companies Act, 1862, Sect. 25, *ante* p. 11.

I, A.B. of _____ in consideration of the sum of £ _____ paid to me by C.D. of _____ (hereinafter called "the said transferee") do hereby transfer to the said transferee the share [or shares] numbered _____ in the undertaking called the _____ Company Limited, to hold into the said transferee, his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the

execution thereof, and I, the said transferee, do hereby agree to take the said share [or shares] subject to the conditions aforesaid. As witness our hands the day of

Witness to the signatures of, etc.

20. The directors may decline to register any transfer of shares, not being fully-paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend¹ the registration of transfers during the fourteen days immediately preceding the ordinary² general meeting in each year. The directors may decline to recognise any instrument of transfer unless (a) a fee not exceeding two shillings and sixpence is paid to the company in respect thereof, and (b) the instrument of transfer is accompanied by the certificate³ of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

¹ Cf. Companies Act, 1862, Sect. 33, *ante* p. 14.

² Clause 46, 47, *post* pp. 105, 106; and Companies Act, 1862, Sect. 49, *ante* p. 22.

³ Companies Act, 1862, Sect. 31, *ante* p. 14.

21. The executors or administrators of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the executors or administrators of the deceased survivor, shall be the only persons recognised by the company as having any title to the share.¹

¹ Companies Act, 1862, Sect. 24, *ante* p. 11.

22. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be required by the directors, have the right, either to be registered as a member in respect of the

share, or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made ; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

23. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right¹ conferred by membership in relation to meetings of the company.

¹ Clauses 49 to 65, *post* pp. 106 to 109.

Forfeiture of Shares.

24. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve¹ a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest² which may have accrued.

¹ Companies Act, 1862, Sects. 62 to 64, *ante* p. 27, and Clauses 110 to 115, *post* pp. 119, 120.

² Clause 14, *ante* p. 96.

25. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

26. If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which

the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

27. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

28. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company shall have received payment in full of the nominal amount of the shares.

29. A statutory declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and such declaration, and the receipt of the company for the consideration, if any, given for the share on the sale or disposition thereof, shall constitute a good title to such share, and the person to whom the share is sold or disposed of shall be registered¹ as the holder of the share and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale, or disposal of the share.

¹ Companies Act, 1862, Sect. 25, *ante* p. 11.

30. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the

same had been payable by virtue of a call¹ duly made and notified.

¹Companies Act, 1867, Sect. 24, p. 11; and Clauses 12 to 17, *ante* pp. 96, 97.

Conversion¹ of Shares into Stock.

31. The directors may, with the sanction of the company previously given in general² meeting, convert any paid-up shares³ into stock, and may with the like sanction reconvert any stock⁴ into paid-up shares of any denomination.

¹Companies Act, 1862, Sect. 29, *ante* p. 13.

²Companies Act, 1862, Sect. 49, *ante* p. 22, Sect. 52, *ante* p. 24; and Clauses 45 to 59, *post* pp. 105 to 108.

³Companies Act, 1862, Sect. 12, *ante* p. 5.

⁴Companies Act, 1900, Sect. 29, *post* p. 238.

32. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of such minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

33. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges, and advantages as regards dividends,¹ voting² at meetings of the company, and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred such privilege or advantage.

¹Clauses 95 to 102, *post* pp. 116, 117.

²Clauses 60 to 67, *post* pp. 109, 110.

34. Such of the regulations of the company (other than those relating to share warrants ¹) as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stock-holder".

¹ Clauses 35 to 40, *post* pp. 102, 103.

*Share Warrants.*¹

35. The company may issue share warrants, and accordingly the directors may in their discretion, with respect to any share which is fully paid up, on application in writing signed by the person registered as holder of the share, and authenticated by such evidence, if any, as the directors may from time to time require as to the identity of the person signing the request, and on receiving the certificate, if any, of the share, and the amount of the stamp duty ² on the warrant and such fee as the directors may from time to time require, issue under the company's seal a warrant, duly stamped, stating that the bearer of the warrant is entitled to the shares therein specified, and may provide by coupons, or otherwise, for the payment of dividends, or other moneys, on the shares included in the warrant.

¹ Companies Act, 1867, Sects. 27 to 36, *post* pp. 151 to 156.

² Companies Act, 1867, Sect. 33, *post* p. 155.

36. A share warrant shall entitle the bearer to the shares included in it, and the shares shall be transferred by the delivery of the share warrant, and the provisions ¹ of the regulations of the company with respect to transfer and transmission of shares shall not apply thereto.

¹ Clauses 18 to 23, *ante* pp. 97 to 99.

37. The bearer of a share warrant shall, on surrender of the warrant to the company for cancellation, and on payment of such sum as the directors may from time to time prescribe, be entitled to have his name entered

as a member in the register¹ of members in respect of the shares included in the warrant.

¹ Companies Act, 1862, Sect. 25, *ante* p. 11.

38. The bearer of a share warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited the depositor shall have the same right of signing a requisition¹ for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register² of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognised as depositor of the share warrant. The company shall on two days' written notice return the deposited share warrant to the depositor.

¹ Companies Act, 1900, Sect. 13, *post* p. 229.

² Companies Act, 1862, Sect. 25, *ante* p. 11.

39. Subject as herein otherwise expressly provided no person shall, as bearer of a share warrant, sign a requisition¹ for calling a meeting of the company, or attend, or vote, or exercise any other privilege of a member at a meeting of the company, or be entitled to receive any notices from the company; but the bearer of a share warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register² of members as the holder of the shares included in the warrant, and he shall be a member³ of the company.

¹ Companies Act, 1900, Sect. 13, *post* p. 229.

² Companies Act, 1862, Sect. 25, *ante* p. 11.

³ Companies Act, 1862, Sect. 23, *ante* p. 10.

40. The directors may from time to time make rules as to the terms on which (if they shall think fit) a new share warrant or coupon may be issued by way of renewal in case of defacement, loss, or destruction.

Alteration of Capital.

41. The directors may, with the sanction of an extraordinary¹ resolution of the company,² increase the capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

¹ Companies Act, 1907, Sect. 45, *post* p. 284.

² Companies Act, 1862, Sect. 34, *ante* p. 15.

42. Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of capital, all new shares shall, before issue, be offered to such persons¹ as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. Such offer² shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of such time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

¹ See Clause 114, *post* p. 120.

² See Companies Act, 1900, Sect. 10 (4), *post* p. 225.

43. The new shares shall be subject to the same provisions with reference to the payment of calls,¹ lien,² transfer,³ transmission,³ forfeiture,⁴ and otherwise as the shares in the original capital.

¹ Clauses 12 to 17, *ante* pp. 96, 97.

² Clauses 9 to 11, *ante* p. 95.

³ Clauses 18 to 23, *ante* pp. 97-99.

⁴ Clauses 24 to 30, *ante* pp. 99, 100.

44.¹ The company may, by special² resolution :—

- (a) Consolidate³ and divide its capital into shares of larger amount than its existing shares.
- (b) By sub-division⁴ of its existing shares, or any of them, divide the whole, or any part, of its capital into shares of smaller amount than is fixed by the Memorandum of Association, subject, nevertheless, to the proviso contained in the Companies Act, 1867, section 21.
- (c) Cancel⁵ any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.
- (d) Reduce⁶ its capital in any manner and with, and subject to, any incident authorised, and consent required, by law.

¹ See now Companies Act, 1907, Sect. 39, *post* p. 232.

² Companies Act, 1862, Sects. 50 and 51, *ante* pp. 22, 23.

³ Companies Act, 1862, Sect. 12, *ante* p. 5; and Sect. 29, *ante* p. 13.

⁴ Companies Act, 1867, Sects. 21, 22, *post* p. 151.

⁵ Companies Act, 1877, Sect. 5, *post* p. 161.

⁶ Companies Act, 1867, Sects. 9 to 20, *post* p. 156 *et seq.* ; Companies Acts, 1877, Sects. 3, 4, 5, *post* p. 160 *et seq.* ; and Companies Act, 1880, Sects. 3 and 4, *post* p. 168.

General Meetings.

45. The statutory general meeting of the company shall be held within the period required by the Companies Act, 1900, section 12.¹

¹ *Post* p. 227.

46. A general meeting shall be held once¹ in every year at such time and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

¹ See Companies Act, 1907, Sect. 24, *post* p. 273.

² Clause 49, *post* p. 106.

47. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

48. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists as provided by the Companies Act, 1900, section 13.¹ If at any time there shall not be within the United Kingdom sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner² as nearly as possible as that in which meetings may be convened by the directors.

¹ *Ante* p. 229.

² Clause 43, *infra*.

Proceedings at General Meetings.

49. Seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting and, in case of special business, the general nature of such business, shall be given in manner hereinafter mentioned,¹ or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons² as are, under the regulations of the company, entitled to receive such notices from the company; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

¹ Clauses 110 to 113, *post* pp. 119, 120.

² Clause 115, *post* p. 120.

50. All business shall be deemed special that is transacted at an extraordinary¹ meeting, and all that is transacted at an ordinary² meeting, with the exception

¹ Clause 47, *ante* p. 106.

² Clauses 46, 47, *ante* pp. 105, 106.

of sanctioning a dividend,³ the consideration of the accounts,⁴ balance-sheets,⁵ and the ordinary⁵ report of the directors and auditors, the election of directors⁶ and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.⁷

³ Clause 95, *post* p. 116.

⁴ Clause 106, *post* p. 118.

⁵ Clauses 107, 108, *post* p. 118.

⁶ Clauses 81 to 83, *post* p. 114.

⁷ Companies Act, 1900, Sect. 22, *post* p. 221.

51. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

52. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

53. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

54. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.¹

¹ Companies Act, 1862, Sect. 52, *ante* p. 24.

55. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other

than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment, or of the business to be transacted at an adjourned meeting.

56. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands,¹ unless a poll is (before or on the declaration of the result of the show of hands) demanded in case the resolution be proposed as a special² or extraordinary³ resolution by at least five members or in any other case by at least two members, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book⁴ of proceedings of the company, shall be conclusive evidence⁵ of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolution.

¹ See Clause 60, *post* p. 109.

² Companies Act, 1862, Sect. 51, *ante* p. 23.

³ Companies Act, 1907, Sect. 45, *post* p. 284.

⁴ Required to be kept by Companies Act, 1862, Sect. 67, p. 29, and by Clause 75 (c), *post* p. 112.

⁵ Compare Companies Act, 1862, Sect. 51, *ante* p. 23.

57. If a poll is duly¹ demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

¹ *I.e.*, as provided by preceding Clause.

58. In the case of an equality of votes, whether on a show of hands, or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

59. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forth-

with. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members.

60. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

61. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders ; and for this purpose seniority shall be determined by the order in which the names stand in the register¹ of members.

¹ Companies Act, 1862, Sect. 25, *ante* p. 11.

62. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy may vote, whether on a show of hands or on a poll, by his committee, curator bonis or other person in the nature of a committee or curator bonis appointed by such Court, and such committee, curator bonis or other person may, on a poll, vote by proxy.

63. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

64. On a poll votes may be given either personally or by proxy.

65. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under the common seal, or under the hand of an officer or attorney so authorised. No person shall act as a proxy unless either he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy, or he is appointed to act at that meeting as proxy for a corporation.

67. An instrument appointing a proxy may be in the following form, or in any other form which the directors shall approve:—

¹ The corresponding form in the old Table A (Clause 51) was required to be witnessed.

68. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers² of the memorandum of association.

¹ Defined in Companies Act, 1900, Sect. 30, *ante* p. 238.

² Companies Act, 1862, Sect. 6, *ante* p. 2.

69. The remuneration of the directors shall from time to time be determined by the company in general meeting.

70. The qualification of a director shall be the holding of at least one share in the company, and it shall be his duty to comply with the provisions¹ of the Companies Act, 1900, section 3.

¹ *Ante* p. 217; amended as to penalty by Companies Act, 1907, Sect. 34, *post* p. 278.

Powers and Duties of Directors.

71. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Companies Acts, 1862 to 1900,¹ or any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the said Acts, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulations made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.²

¹ Companies Act, 1900, Sect. 21, *post* p. 234 (appointment of auditors); Sect. 22, *post* p. 235 (remuneration of auditors); Companies Act, 1907, Sect. 19, *post* p. 270 (reports of auditors); Companies Act, 1862, Sect. 50, p. 22 (alteration of company's regulations).

² See Companies Act, 1862, Sect. 67, *ante* p. 29.

72. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term, and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way, and partly in another), as they may think fit, and a director so appointed shall not, while holding such office, be subject to retirement by rotation, or taken into account in determining the rotation of retirement of directors; but his appointment shall be subject to determination *ipso facto* if he shall cease from any cause to be a director, or if the company in general meeting shall resolve that his tenure of the office of managing director or manager be determined.

73. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors

for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued capital of the company without the sanction of the company in general meeting.

74. The directors shall duly comply with the provisions of the Companies Acts, 1862 to 1900, or any statutory modification thereof for the time being in force, and in particular the provisions in regard to the registration¹ of mortgages and charges affecting the property of, or created by, the company, and to keeping² a register of the directors, and in regard to sending³ to the Registrar of Joint Stock Companies an annual list of members, and a summary of particulars relating thereto, and notice of any consolidation⁴ or increase⁵ of capital, or conversion⁴ of shares into stock, and copies⁶ of special resolutions, and a copy² of the register of directors, and notifications² of any changes therein.

¹ Companies Act, 1862, Sect. 43, *ante* p. 20; Companies Act, 1907, Sect. 10 and 12, *post* pp. 260 *et seq.*; Companies Act, 1900, Sect. 18, *post* p. 233.

² Companies Act, 1862, Sect. 45, *ante* p. 21.

³ Companies Act, 1862, Sect. 26, *ante* p. 12; Companies Act, 1900, Sect. 19, *ante* p. 234.

⁴ Companies Act, 1862, Sect. 28, *ante* p. 13; Companies Act, 1907, Sect. 39, *post* p. 282.

⁵ Companies Act, 1862, Sect. 34, *ante* p. 15.

⁶ Companies Act, 1862, Sect. 53, *ante* p. 24; Companies Act, 1907, Sect. 45, *post* p. 284.

75. The directors¹ shall cause minutes to be made in books provided for the purpose—

- (a) of all appointments of officers made by the directors ;
- (b) of the names of the directors present at each meeting of the directors and of any committee of the directors ;
- (c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors, and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

¹ Compare Companies Acts, 1862, Sect. 67, *ante* p. 29.

The Seal.

76 The seal¹ of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of at least two directors, and of the secretary or such other person as the directors may appoint for the purpose; and those two directors and secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

¹ Companies Act, 1862, Sect. 18, *ante* p. 8.

Disqualifications of Directors.

77. The office of director shall be vacated:—

If he ceases to be a director by virtue of the Companies Act, 1900, section 3.¹

If he holds any other office of profit under the company except that of managing director or manager.

If he becomes bankrupt.

If he is found lunatic or becomes of unsound mind.

If he is concerned or participates in the profits of any contract with the company.

But the above rules shall be subject to the following exceptions:—That no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is director: nevertheless, he shall not vote in respect of such contract or work: and if he does so vote his vote shall not be counted.

¹ *Ante* p. 217; as amended by Companies Act, 1907, Sect. 34, *post* p. 278.

Rotation of Directors.

78. At the first ordinary¹ meeting of the company the whole of the directors shall retire from office, and at the ordinary meeting in every subsequent year one-third of the directors for the time being, or if their number is not three or a multiple of three, then the number nearest to one-third, shall retire from office.

¹ Clauses 46 and 47, *ante* pp. 105, 106.

79. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

80. A retiring director shall be eligible for re-election.

81. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto.

82. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place, and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall be deemed to have been re-elected at such adjourned meeting.

83. The company may from time to time in general¹ meeting increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

¹ Clause 46, *ante* p. 105.

84. Any casual vacancy occurring in the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

85. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary¹ general meeting, but shall be eligible for election by the company at that meeting as an additional director.

¹ Clauses 46, 47, *ante* pp. 105, 106.

86. The company may by extraordinary¹ resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead; the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

¹ Companies Act, 1907, Sect. 45, *post* p. 284.

Proceedings of Directors.

87. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may and the secretary on the requisition of a director shall at any time summon a meeting of the directors.

88. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall (when the number of directors exceeds three) be three.

89. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

90. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

91. The directors may delegate any of their powers

to committees consisting of such member or members of their body as they think fit ; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on them by the directors.

92. A committee may elect a chairman of their meetings : if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

93. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

94. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.¹

¹ Compare Companies Act, 1862, Sect, 67, *ante* p. 29.

Dividends and Reserve.

95. The company in general¹ meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

¹ Clauses 46, *ante* p. 105, and 58, *ante* p. 108.

96. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

97. No dividend shall be paid otherwise than out of profits.

98. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all divi-

dends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the company dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

99. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalising dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

100. If several persons are registered as joint holders of any share any one of them may give effectual receipts for any dividend payable on the share.

101. Notice of any dividend that may have been declared shall be given in manner¹ hereinafter mentioned to the persons entitled to share therein.

¹ Clause 110, *post* p. 119.

102. No dividend shall bear interest against the company.

Accounts.

103.¹ The directors shall cause true accounts to be kept:—

Of the sums of money received and expended by the company and the matter in respect of which such receipt and expenditure takes place; and

Of the assets and liabilities of the company.

¹ See also Companies Act, 1907, Sect. 9 (7), *post* p. 259, where a Company is authorised to pay interest out of Capital.

104. The books of account shall be kept at the re-

gistered office¹ of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

¹ Companies Act, 1862, Sects. 39, 40, *ante* p. 18.

105. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute¹ or authorised by the directors or by the company in general meeting.

¹ *E.g.*, as to the auditor's report, Companies Act, 1907, Sect. 19 (3), *post* p. 270, and Sect. 23 (1), p. 273; and where an order for winding up has been made, Companies Act, 1862, Sect. 156, *ante* p. 64.

106. Once at least in every year the directors shall lay before the company in general¹ meeting a profit and loss account for the period since the preceding account or (in the case of the first account) since the incorporation of the company, made up to a date not more than six months before such meeting.

¹ Clauses 46, *ante* p. 105, and 50, *ante* p. 106.

107. A balance sheet shall be made out in every year and laid before the company in general¹ meeting made up to a date not more than six months before such meeting. The balance sheet shall be accompanied by a report of the directors² as to the state of the company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount, if any, which they propose to carry to a reserve fund.

¹ Clauses 46, *ante* p. 105, and 50, *ante* p. 106.

² And of the auditors, Companies Act, 1907, Sect. 19 (2), *post* p. 270.

108. A copy of such balance sheet and report shall, seven days previously to the meeting, be sent to the

persons¹ entitled to receive notices of general meetings in the manner in which notices are to be given² hereunder.

¹ Clause 114, *post* p. 120.

² Clause 110, *infra*.

Audit.

109. Auditors shall be appointed and their duties regulated in accordance with the Companies Act, 1900, sections¹ 21, 22, and 23,² or any statutory modification thereof for the time being in force.

¹ *Post* pp. 234, 235.

² For Sect. 23 there is now substituted Sect. 19 of the Companies Act, 1907, *post* p. 270.

*Notices.*¹

110. A notice may be given by the company to any member² either personally, or by sending it through the post in a prepaid letter addressed to such member at his registered address, or (if he has no registered address in the United Kingdom) at the address, if any, within the United Kingdom supplied by him to the company for the giving of notices to him.

¹ Compare Companies Act, 1862, Sects. 62 to 64, *ante* p. 27.

² See Companies Acts, 1862, Sect. 23, p. 10.

111. If a member has no registered address in the United Kingdom and has not supplied to the company an address within the United Kingdom for the giving of notices to him, a notice addressed to him, and advertised in a newspaper circulating in the neighbourhood of the registered office¹ of the company, shall be deemed to be duly given to him on the day on which the advertisement appears.

¹ Companies Act, 1862, Sect. 39, *ante* p. 18.

112. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register in respect of the share,

113. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, in the United Kingdom supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

114. Notice of every general¹ meeting shall be given in some manner hereinbefore² authorised to (a) every member of the company (including bearers of share warrants) except those members who (having no registered address within the United Kingdom) have not supplied to the company an address within the United Kingdom for the giving of notices to them, and also to (b) every person entitled to a share in consequence of the death or bankruptcy of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings.

¹ Clause 46, *ante* p. 105.

² Clause 110, *ante* p. 119.

115. Any notice, if given by post, shall be deemed to have been served at the time when the letter containing the same is put into the Post Office, and in proving the giving of the notice it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the Post Office.

TABLE B.¹

TABLE OF FEES to be paid to the REGISTRAR of JOINT STOCK COMPANIES by a Company having a Capital divided into Shares.

For Registration of a Company whose nominal Capital does not exceed £2,000, a Fee of	£	s.	d.
	-	-	2 0 0
For Registration of a Company whose nominal Capital exceeds £2,000, the above Fee of £2, with the following additional Fees, regulated according to the Amount of nominal Capital; (that is to say,)	£	s.	d.
For every £1,000 of nominal Capital, or Part of £1,000, after the first £2,000, up to £5,000	-	-	1 0 0
For every £1,000 of nominal Capital, or Part of £1,000, after the first £5,000, up to £100,000	-	-	0 5 0
For every £1,000 of nominal Capital, or Part of £1,000, after the first £100,000	-	-	0 1 0
For Registration of any Increase of Capital made after the First Registration of the Company, the same Fees per £1,000, or Part of a £1,000, as would have been payable if such increased Capital had formed Part of the original Capital at the Time of Registration.			
Provided that no Company shall be liable to pay in respect of nominal Capital, on Registration or afterwards, any greater Amount of Fees than £50, taking into account in the Case of Fees payable on an Increase of Capital after Registration the Fees paid on Registration.			
For Registration of any existing Company, except such Companies as are by this Act exempted from payment of Fees in respect of Registration under this Act, the same Fee as is charged for Registering a new Company.			

¹ Sect. 17, *ante* p. 8, and Sect. 71, *ante* p. 81.

For Registering any Document hereby required or authorized to be registered, other than the Memorandum of Association - - - - -	0	5	0
For making a Record of any Fact hereby authorized or required to be recorded by the Registrar of Companies, a Fee of - - - - -	0	5	0

TABLE C.¹

TABLE OF FEES to be paid to the REGISTRAR of JOINT STOCK COMPANIES by a Company not having a Capital divided into Shares.

For Registration of a Company whose number of Members, as stated in the Articles of Association, does not exceed 20 - - - - -	£	s.	d.
	2	0	0
For Registration of a Company whose Number of Members, as stated in the Articles of Association, exceeds 20, but does not exceed 100 - - - - -	5	0	0
For Registration of a Company whose Number of Members, as stated in the Articles of Association, exceeds 100, but is not stated to be unlimited, the above Fee of £5, with an additional 5s. for every 50 Members or less Number than 50 Members after the first 100.			
For Registration of a Company in which the Number of Members is stated in the Articles of Association to be unlimited, a Fee of - - - - -	20	0	0
For Registration of any Increase on the Number of Members made after the Registration of the Company in respect of every 50 Members, or less than 50 Members, of such Increase - - - - -	0	5	0
Provided that no One Company shall be liable to pay on the whole a greater Fee than £20 in respect of its Number of Members, taking into account the Fee paid on the First Registration of the Company.			
For Registration of any existing Company, except such Companies as are by this Act exempted from Payment of Fees in respect of Registration under this Act, the same Fee as is charged for registering a new Company.			
For registering any Document hereby required or authorized to be registered, other than the Memorandum of Association - - - - -	0	5	0

¹ Sect. 17, *ante* p. 8, and Sect. 71 *ante* p. 31.

For making a Record of any Fact hereby authorized
or required to be recorded by the Registrar of
Companies, a Fee of - - - - - 0 5 0

FORM D.¹

FORM OF STATEMENT referred to in Part III. of the Act.

* The Capital of the Company is , divided into
Shares of each.
The Number of Shares issued is .
Calls to the Amount of Pounds per Share have been
made, under which the Sum of Pounds has been received.
The Liabilities of the Company on the First Day of January
(or July) were,—
Debts owing to sundry Persons by the Company.
On Judgment, £
On Specialty, £
On Notes or Bills, £
On Simple Contracts, £
On estimated Liabilities, £
The Assets of the Company on that Day were—
Government Securities [*stating them*]
Bills of Exchange and Promissory Notes, £
Cash at the Bankers, £
Other Securities, £

* If the Company has no Capital divided into Shares the
Portion of the Statement relating to Capital and Shares must
be omitted.

¹ Sect. 44, *ante* p. 20.

SECOND SCHEDULE.¹

FORM A.

MEMORANDUM of ASSOCIATION of a Company limited by Shares.

1st. The Name of the Company is "The Eastern Steam Packet Company, Limited."

2d. The Registered Office of the Company will be situate in England.

3d. The Objects for which the Company is established are, "the Conveyance of Passengers and Goods in Ships or Boats "between such Places as the Company may from Time to Time "determine, and the doing all such other Things as are "incidental or conducive to the Attainment of the above "Object."

4th. The Liability of the Members is limited.

5th. The Capital of the Company is Two hundred thousand Pounds divided into One thousand Shares of Two hundred Pounds each.

W^e, the several Persons whose Names and Addresses are subscribed, are desirous of being formed into a Company in pursuance of this Memorandum of Association, and we respectively agree to take the Number of Shares in the Capital of the Company set opposite our respective Names.

^o Names, Addresses, and Description of Subscribers.	Number of Sharestaken by each Subscriber.
"1. John Jones of in the County of Merchant	200
"2. John Smith of in the County of -	25
"3. Thomas Green of in the County of -	30
"4. John Thompson of in the County of -	40
"5. Caleb White of in the County of -	15
"6. Andrew Brown of in the County of -	5
"7. Cæsar White of in the County of -	10
Total Shares taken - - -	325

Dated the 22d Day of November, 1861.

Witness to the above Signatures,

A.B., No. 13 Hute Street, Clerkenwell, Middlesex.

¹ Sect 71, *ante* p. 31.

² Sect. 8, *ante* p. 8.

FORM B.

MEMORANDUM and ARTICLES of ASSOCIATION of a Company limited by Guarantee, and not having a Capital divided into Shares.

*Memorandum of Association.*¹

1st. The Name of the Company is, "The Mutual London Marine Association, Limited."

2d. The Registered Office of the Company will be situate in England.

3d. The Objects for which the Company is established are, "the mutual Insurance of Ships belonging to Members of the Company, and the doing all such other Things as are incidental "or conducive to the Attainment of the above Objects."

4th. Every Member of the Company undertakes to contribute to the Assets of the Company in the event of the same being wound up during the Time that he is a Member, or within One Year afterwards, for Payment of the Debts and Liabilities of the Company contracted before the Time at which he ceases to be a Member, and the Costs, Charges, and Expenses of winding up the same, and for the Adjustment of the Rights of the Contributors amongst themselves, such Amount as may be required not exceeding Ten Pounds.

We, the several Persons whose Names and Addresses are subscribed, are desirous of being formed into a Company, in pursuance of this Memorandum of Association.

Names, Addresses, and Descriptions of Subscribers.

"1. John Jones of	in the County of	Merchant.
"2. John Smith of	in the County of	
"3. Thomas Green of	in the County of	
"4. John Thompson of	in the County of	
"5. Caleb White of	in the County of	
"6. Andrew Brown of	in the County of	
"7. Cæsar White of	in the County of	

Dated the 22d Day of November, 1861.

Witness to the above Signatures,
A.B., No. 13 Hute Street, Clerkenwell, Middlesex.

¹Sect. 9, *ante* p. 4.

ARTICLES of ASSOCIATION¹ to accompany preceding MEMORANDUM of ASSOCIATION.

- (1.) The Company, for the Purpose of Registration, is declared to consist of Five hundred Members.
- (2.) The Directors herein-after mentioned may, whenever the Business of the Association requires it, register an Increase of Members.

Definition of Members.

- (3.) Every Person shall be deemed to have agreed to become a Member of the Company who insures any Ship or Share in a Ship in pursuance of the Regulations herein-after contained.

General Meetings.

- (4.) The First General Meeting shall be held at such Time, not being more than Three Months after the Incorporation of the Company, and at such Place, as the Directors may determine.
- (5.) Subsequent General Meetings shall be held at such Time and Place as may be prescribed by the Company in General Meeting; and if no other Time or Place is prescribed, a General Meeting shall be held on the First Monday in February in every Year, at such Place as may be determined by the Directors.
- (6.) The above-mentioned General Meetings shall be called Ordinary Meetings; all other General Meetings shall be called Extraordinary.
- (7.) The Directors may, whenever they think fit, and they shall, upon a Requisition made in Writing by any Five or more Members, convene an Extraordinary General Meeting.
- (8.) Any Requisition made by the Members shall express the Object of the Meeting proposed to be called and shall be left at the Registered Office of the Company.
- (9.) Upon the Receipt of such Requisition the Directors shall forthwith proceed to convene a General Meeting: If they do not proceed to convene the same within Twenty-one Days from the Date of the Requisition, the Requisitionists, or any other Five Members, may themselves convene a Meeting. •

Proceedings at General Meetings.

- (10.) Seven Days' Notice at the least, specifying the Place, the Day, and the Hour of Meeting, and in case of special Business the general Nature of such Business, shall be

¹Sect. 14, ante p. 6.

given to the Members in Manner herein-after mentioned, or in such other Manner, if any, as may be prescribed by the Company in General Meeting; but the Non-receipt of such Notice by any Member shall not invalidate the Proceedings at any General Meeting.

- (11.) All Business shall be deemed special that is transacted at an Extraordinary Meeting, and all that is transacted at an Ordinary Meeting, with the Exception of the Consideration of the Accounts, Balance Sheets, and the ordinary Report of the Directors.
- (12.) No Business shall be transacted at any Meeting except the Declaration of a Dividend, unless a Quorum of Members is present at the Commencement of such Business; and such Quorum shall be ascertained as follows; that is to say, if the Members of the Company at the Time of the Meeting do not exceed Ten in Number, the Quorum shall be Five; if they exceed Ten there shall be added to the above Quorum One for every Five additional Members up to Fifty, and One for every Ten additional Members after Fifty, with this Limitation, that no Quorum shall in any Case exceed Thirty.
- (13.) If within One Hour from the Time appointed for the Meeting a Quorum of Members is not present, the Meeting, if convened upon the Requisition of the Members, shall be dissolved: In any other Case it shall stand adjourned to the same Day in the following Week at the same Time and Place; and if at such adjourned Meeting a Quorum of Members is not present, it shall be adjourned *sine die*.
- (14.) The Chairman (if any) of the Directors shall preside as Chairman at every General Meeting of the Company.
- (15.) If there is no such Chairman, or if at any Meeting he is not present at the Time of holding the same, the Members present shall choose some One of their Number to be Chairman of such Meeting.
- (16.) The Chairman may, with the Consent of the Meeting, adjourn any Meeting from Time to Time and from Place to Place, but no Business shall be transacted at any adjourned Meeting other than the Business left unfinished at the Meeting from which the Adjournment took place.
- (17.) At any General Meeting, unless a Poll is demanded by at least Five Members, a Declaration by the Chairman that a Resolution has been carried, and an Entry to that Effect in the Book of Proceedings of the Company, shall be sufficient Evidence of the Fact, without Proof of the Number or Proportion of the Votes recorded in favour of or against such Resolution.
- (18.) If a Poll is demanded in manner aforesaid, the same shall be taken in such Manner as the Chairman directs, and the Result of such Poll shall be deemed to be the Resolution of the Company in General Meeting.

- (19.) Every Member shall have One Vote and no more.
- (20.) If any Member is a Lunatic or Idiot he may vote by his Committee Curator bonis, or other legal Curator.
- (21.) No Member shall be entitled to vote at any Meeting unless all Monies due from him to the Company have been paid.
- (22.) Votes may be given either personally or by Proxies: A Proxy shall be appointed in Writing under the Hand of the Appointor, or if such Appointor is a Corporation, under its Common Seal.
- (23.) No Person shall be appointed a Proxy who is not a Member, and the Instrument appointing him shall be deposited at the Registered Office of the Company not less than Forty-eight Hours before the Time of holding the Meeting at which he proposes to vote.
- (24.) Any Instrument appointing a Proxy shall be in the following Form:—

ing form:—

_____, of _____, in the County _____, being a Member of the _____ Company Limited, hereby appoint _____, of _____, as my Proxy, to vote for me and on my behalf at the [Ordinary or Extraordinary, *as the case may be*] General Meeting of the Company to be held on the _____ Day of _____, and at any Adjournment thereof to be held on the _____ Day of _____ next [or at any Meeting of the Company that may be held in the Year _____].

As witness my Hand, this _____ Day of _____ Signed by the said _____ in the Presence of _____

(25.) The Number of the Directors, and the Names of the First Directors shall be determined by the Subscribers of the Memorandum of Association.

(26.) Until Directors are appointed the Subscribers of the Memorandum of Association shall for all the Purposes of this Act be deemed to be Directors.

(27.) The Business of the Company shall be managed by the Directors, who may exercise all such Powers of the Company as are not hereby required to be exercised by the Company in General Meeting; but no Regulation made by the Company in General Meeting shall invalidate any prior Act of the Directors which would have been valid if such Regulation had not been made.

Election of Directors.

- (28.) The Directors shall be elected annually by the Company in General Meeting.

Business of Company.

[Here insert Rules as to Mode in which Business of Insurance is to be conducted.]

Accounts.

- (29.) The Accounts of the Company shall be audited by a Committee of Five Members, to be called the Audit Committee.
(30.) The First Audit Committee shall be nominated by the Directors out of the Body of Members.
(31.) Subsequent Audit Committee shall be nominated by the Members at the Ordinary General Meeting in each year.
(32.) The Audit Committee shall be supplied with a Copy of the Balance Sheet, and it shall be their Duty to examine the same with the Accounts and Vouchers relating thereto.
(33.) The Audit Committee shall have a List delivered to them of all Books kept by the Company, and they shall at all reasonable Times have access to the Books and Accounts of the Company: They may, at the expense of the Company, employ Accountants or other Persons to assist them in investigating such Accounts, and they may in relation to such Accounts examine the Directors or any other Officer of the Company.
(34.) The Audit Committee shall make a Report to the Members upon the Balance Sheet and Accounts, and in every such Report they shall state whether in their Opinion the Balance Sheet is a full and fair Balance Sheet, containing the Particulars required by these Regulations of the Company, and properly drawn up, so as to exhibit a true and correct View of the State of the Company's Affairs, and in case they have called for Explanation or Information from the Directors, whether such Explanations or Information have been given by the Directors, and whether they have been satisfactory, and such Report shall be read together with the Report of the Directors at the Ordinary Meeting.

Notices.

- (35.) A Notice may be served by the Company upon any Member either personally, or by sending it through the Post in a prepaid Letter addressed to such Member at his registered Place of Abode.
(36.) Any Notice, if served by Post, shall be deemed to have been served at the Time when the Letter containing the same

would be delivered in the ordinary Course of the Post ; and in proving such Service it shall be sufficient to prove that the Letter containing the Notice was properly addressed, and put into the Post Office.

Winding up.

- (37.) The Company shall be wound up voluntarily whenever an Extraordinary Resolution,¹ as defined by the Companies Act, 1862, is passed requiring the Company to be wound up voluntarily.

¹ Sect. 129, *ante* p. 54.

Names, Addresses, and Descriptions of Subscribers.

"1. John Jones of	in the County of	Merchant.
"2. John Smith of	in the County of	
"3. Thomas Green of	in the County of	
"4. John Thompson of	in the County of	
"5. Caleb White of	in the County of	
"6. Andrew Brown of	in the County of	
"7. Cæsar White of	in the County of	

Dated the 22d Day of November, 1861.

Witness to the above Signatures,

A.B., No. 13 Hute Street, Clerkenwell, Middlesex.

FORM C.

MEMORANDUM and ARTICLES of ASSOCIATION of a Company limited by Guarantee,¹ and having a Capital divided into Shares.

Memorandum of Association.

1st. The Name of the Company is "The Highland Hotel Company, Limited."

2d. The Registered Office of the Company will be situate in Scotland.

3d. The Objects for which the Company is established are "the facilitating travelling in the Highlands of Scotland, by providing Hotels and Conveyances by Sea and by Land for the Accommodation of Travellers, and the doing all such other Things as are incidental or conducive to the Attainment of the above Object."

¹ Sect. 9, *ante* p. 4, and see now the Companies Act, 1900, Sect. 27, *post* p. 237.

4th. Every Member of the Company undertakes to contribute to the Assets of the Company in the event of the same being wound up during the Time that he is a Member, or within One Year afterwards, for Payment of the Debts and Liabilities of the Company, contracted before the Time at which he ceases to be a Member, and the Costs, Charges, and Expenses of winding up the same and for the Adjustment of the Rights of the Contributories amongst themselves, such Amount as may be required, not exceeding Twenty Pounds.

WE, the several Persons whose Names and Addresses are subscribed, are desirous of being formed into a Company, in pursuance of this Memorandum of Association.

Names, Addresses, and Descriptions of Subscribers.

"1. John Jones of	in the County of	Merchant.
"2. John Smith of	in the County of	
"3. Thomas Green of	in the County of	
"4. John Thompson of	in the County of	
"5. Caleb White of	in the County of	
"6. Andrew Brown of	in the County of	
"7. Cæsar White of	in the County of	

Dated the 22d Day of November, 1861.

Witness to the above Signatures,

A.B., No. 13 Hute Street, Clerkenwell, Middlesex.

Articles of Association¹ to accompany preceding Memorandum of Association.

1. The Capital of the Company shall consist of Five hundred thousand Pounds, divided into Five thousand Shares of One hundred Pounds each.

2. The Directors may, with the Sanction of the Company in General Meeting, reduce the Amount of Shares.

3. The Directors may, with the Sanction of the Company in General Meeting, cancel any Shares belonging to the Company.

4. All the Articles of Table A. shall be deemed to be incorporated with these Articles, and to apply to the Company.

WE, the several Persons whose Names and Addresses are subscribed, agree to take the Number of Shares in the Capital of the Company set opposite our respective Names.

¹Sect. 14, *ante* p. 6.

Names, Addresses, and Description of Subscriber.			Number of Shares taken by each Subscriber.
"1. John Jones of	in the County of	-	200
"2. John Smith of	in the County of	-	25
"3. Thomas Green of	in the County of	-	30
"4. John Thompson of	in the County of	-	40
"5. Caleb White of	in the County of	-	15
"6. Andrew Brown of	in the County of	-	5
"7. Cæsar White of	in the County of	-	10
Total Shares taken			325

Dated the 22d Day of November, 1861.

Witness to the above Signatures,
A.B., No. 13 Hute Street, Clerkenwell, Middlesex.

FORM D.

MEMORANDUM and ARTICLES of ASSOCIATION of an unlimited Company having a Capital divided into Shares.

*Memorandum of Association.*¹

1st. The Name of the Company is "The Patent Stereotype Company."

2d. The Registered Office of the Company will be situate in England.

3d. The Objects for which the Company is established are "the working of a Patent Method of founding and casting Stereotype Plates, of which Method John Smith of London, is the sole Patentee."

WE, the several Persons whose Names are subscribed, are desirous of being formed into a Company, in pursuance of this Memorandum of Association.

Names, Addresses, and Description of Subscribers.

"1. John Jones of	in the County of	Merchant.
"2. John Smith of	in the County of	
"3. Thomas Green of	in the County of	
"4. John Thompson of	in the County of	
"5. Caleb White of	in the County of	
"6. Andrew Brown of	in the County of	
"7. Abel Brown of	in the County of	

Dated 22d Day of November, 1861.

Witness to the above Signatures,
A.B., No. 20 Bond Street, Middlesex.

¹ Sect. 10, *ante* p. 4.

*Articles of Association¹ to accompany the preceding Memorandum of Association.***Capital of the Company.**

The Capital of the Company is Two thousand Pounds, divided into Twenty Shares of One hundred Pounds each.

Application of Table A.

All the Articles of Table A. shall be deemed to be incorporated with these Articles, and to apply to the Company.

We, the several Persons whose Names and Addresses are subscribed, agree to take the Number of Shares in the Capital of the Company set opposite our respective Names.

Names, Addresses, and Description of Subscribers.	Number of Shares taken by Subscribers.
"1. John Jones of in the County of Merchant	1
"2. John Smith of in the County of -	5
"3. Thomas Green of in the County of -	2
"4. John Thompson of in the County of -	2
"5. Caleb White of in the County of -	3
"6. Andrew Brown of in the County of -	4
"7. Abel Brown of in the County of -	1
Total Shares taken - - -	18

Dated the 22d Day of November, 1861.

Witness to the above Signatures,
A.B., No. 20 Bond Street, Middlesex.

¹ Sect. 14, *ante* p. 6.

No. of }
Certificate }

[Form No. 7A.]

"THE COMPANIES' ACTS, 1862 to 1900."

FORM E*

as altered by the Board of Trade, by Notices in the London Gazette, pursuant to s. 71 of the Companies' Act, 1862, and s. 19 of the Companies' Act, 1900.

A 5/-
Companies'
Registration
Fee Stamp
must be
impressed
here.

Summary of Capital and Shares of the _____

_____ Company, Limited, made up
to the _____ day of _____ 190____ (being the four-
teenth day succeeding the date of the First Ordinary General Meeting
in the year).

* See Companies Act, 1907, Sect. 21, *post* p. 272, as to the extra particulars to be inserted herein.

Presented for filing by

**List of Persons holding Shares in the _____
Company, Limited, on the _____ day of _____ 190____, and
of Persons who have held Shares therein at any time since the
date of the last Return, showing their Names and Addresses,
and an Account of the Shares so held.**

Folio in Register Ledger containing Particulars	NAMES, ADDRESSES, AND OCCUPATIONS			
	Surname	Christian Name	Address	Occupation

ACCOUNT OF SHARES					REMARKS
* Number of Shares held by existing Members at date of Return †	‡ Particulars of Shares Transferred since the date of the last Return by persons who are still Members		‡ Particulars of Shares Transferred since the date of the last Return by persons who have ceased to be Members		
	Number †	Date of Registration of Transfer	Number †	Date of Registration of Transfer	
				(Signature) _____ (Officer) _____	

*** The aggregate Number of Shares held and not the Distinctive Numbers is to be stated, and the column must be added up throughout, so as to make one total to agree with that stated in the Summary to have been taken up.**

† When the Shares are of different classes these columns may be subdivided so that the number of each class held, or transferred, may be shewn separately.

{ The date of registration of each Transfer should be given as well as the Number of Shares transferred on each date. The Particulars should be placed opposite the name of the Transferor, and not opposite that of the Transferee, but the name of the Transferee may be inserted in the "Remarks" column, immediately opposite the particulars of each Transfer.

FORM F.*

LICENCE TO HOLD LANDS.¹

The Board of Trade hereby license the
to hold the Lands hereunder described [*insert Description of
Lands*] [or to hold Lands not exceeding in the whole acres].
The Conditions of this License are [*insert Conditions, if any*].

¹ Sect. 21, *ante* p. 10.

* Substituted for the original Form F. by an order of the Board
of Trade made under Sect. 71, *ante* p. 31, on 31st May, 1907.

THIRD SCHEDULE.

FIRST PART.

Date and Chapter of Act.	Title of Act.
21 & 22 Geo. 3. c. 46. (Parliament of Ireland.)	An Act to promote Trade and Manufactures by regulating and encouraging Partnerships.
7 & 8 Vict. c. 110. -	An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies.
7 & 8 Vict. c. 111. -	An Act for facilitating the winding up the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements.
7 & 8 Vict. c. 113. -	An Act to regulate Joint Stock Banks in England.
8 & 9 Vict. c. 98. -	An Act for facilitating the winding up the Affairs of Joint Stock Companies in Ireland unable to meet their pecuniary Engagements.
9 & 10 Vict. c. 28. -	An Act to facilitate the Dissolution of certain Railway Companies.
9 & 10 Vict. c. 75. -	An Act to regulate Joint Stock Banks in Scotland and Ireland.
10 & 11 Vict. c. 78. -	An Act to amend an Act for the Registration, Incorporation, and Regulation of Joint Stock Companies.
11 & 12 Vict. c. 45. -	An Act to amend the Acts for facilitating the winding up the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements, and also to facilitate the Dissolution and winding up of Joint Stock Companies and other Partnerships.
12 & 13 Vict. c. 108. -	An Act to amend the Joint Stock Companies Winding-up Act, 1848.
19 & 20 Vict. c. 47. -	An Act for the Incorporation and Regulation of Joint Stock Companies and other Associations.
20 & 21 Vict. c. 14. -	An Act to amend the Joint Stock Companies Act, 1856.
20 & 21 Vict. c. 49. -	An Act to amend the Law relating to Banking Companies.

Date and Chapter of Act.	Title of Act.
20 & 21 Vict. c. 78. -	An Act to amend the Act Seven and Eight Victoria, Chapter One hundred and eleven, for facilitating the winding up the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements, and also the Joint Stock Companies Winding-up Acts, 1848 and 1849.
20 & 21 Vict. c. 80. -	An Act to amend the Joint Stock Companies Act, 1856.
21 & 22 Vict. c. 60. -	An Act to amend the Joint Stock Companies Acts, 1856 and 1857, and the Joint Stock Banking Companies Act, 1857.
21 & 22 Vict. c. 91. -	An Act to enable Joint Stock Banking Companies to be formed on the Principle of Limited Liability.

SECOND PART.

7 & 8 Vict. c. 113. s. 47.

Existing Companies to have the Powers of suing and being sued.

Every Company of more than Six Persons established on the Sixth Day of May One thousand eight hundred and forty-four, for the Purpose of carrying on the Trade or Business of Bankers within the Distance of Sixty-five Miles from London, and not within the Provisions of the Act passed in the Session holden in the Seventh and Eighth Years of the Reign of Her present Majesty, Chapter One hundred and thirteen, shall have the same Powers and Privileges of suing and being sued in the Name of any One of the Public Officers of such Co-partnership as the Nominal Plaintiff, Petitioner, or Defendant on behalf of such Co-partnership; and all Judgments, Decrees, and Orders, made and obtained in any such Suit may be enforced in like Manner as is provided with respect to such Companies carrying on the said Trade or Business at any Place in England exceeding the Distance of Sixty-five Miles from London, under the Provisions of an Act passed in the Seventh year of the Reign of King George the Fourth, Chapter Forty-six, intituled "An Act for the better regulating Co-partnerships of Certain Bankers in England, and for amending so much of an Act of the Thirty-ninth and Fortieth Years of the Reign of His late Majesty King George the Third, intituled 'An Act for establishing an Agreement with the Governor and Company of the Bank of England for advancing the Sum of Three Millions towards the Supply for the Service of the Year One thousand eight hundred,' as relates to the

same," provided that such first-mentioned Company shall make out and deliver from Time to Time to the Commissioners of Stamps and Taxes the several Accounts or Returns required by the last-mentioned Act, and all the provisions of the last-recited Act as to such Accounts or Returns shall be taken to apply to the Accounts or Returns so made out and delivered by such first-mentioned Companies as if they had been originally included in the Provisions of the last-recited Act.

20 & 21 Vict. c. 49, Part of Section XII.

Notwithstanding anything contained in any Act passed in the Session holden in the Seventh and Eighth Years of the Reign of Her present Majesty, Chapter One hundred and thirteen, and intituled "An Act to regulate Joint Stock Banks in England," or in any other Act, it shall be lawful for any Number of Persons, not exceeding Ten, to carry on in Partnership the Business of Banking, in the same Manner and upon the same Conditions in all respects as any Company of not more than Six Persons could before the passing of this Act have carried on such Business.

Power to form Banking Partnerships of Ten Persons.

THE COMPANIES SEALS ACT, 1864.

(27 VICTORIA, CHAPTER 19).

An Act to enable Joint Stock Companies carrying on Business in Foreign Countries to have Official Seals to be used in such Countries.

- Short Title.** 1. This Act may be cited for all Purposes as "The Companies Seals Act, 1864."
- Power to Companies under Companies Act, 1862, transacting business in foreign countries to have Official Seals for use in such countries.** 2. Any Company, under "The Companies Act, 1862," whose Objects require or comprise the Transaction of Business, as herein-before mentioned, in Foreign Countries, may cause to be prepared an Official Seal for and to be used in any Place, District, or Territory situate out of the United Kingdom in which the Business of the Company shall be carried on, and every such Official Seal may and shall be a Fac-simile of or as nearly as practicable a Fac-simile of the Common Seal of the Company, with the Exception that on the Face thereof shall be inscribed the Name of each and every Place, District, or Territory in and for which it is to be used : Provided that it shall be lawful for any such Company as aforesaid from Time to Time to break up and renew any Official Seal or Seals, and to vary the Limits within which it is intended to be used.
- Power to Companies to have Official Seal.** 3. Every Company having or using any such Official Seal as is authorized by this Act may from Time to Time, by any Instrument or Instruments in Writing under the Common Seal of the Company, empower any Agent, or Agents specially appointed for the Purpose, or any local Agent, Board, Committee, Manager, or Commissioner appointed under the Provisions of the

Articles of Association of such Company, in any Place, District, or Territory situate out of the United Kingdom where the Business of the Company shall for the Time being be carried on, to affix such Official Seal to any Deed, Contract, or other Instrument to which the Company is or shall be made a Party in such Place, District, or Territory, and no other Order of the Company or the Board of Directors thereof shall be necessary to authorize any such Seal to be affixed to any Deed, Contract, or other Instrument.

4. Every Power granted under the last preceding Section shall, as between the Company, their Successors and Assigns, on the one hand, and the Person or Persons dealing with the Agent or Agents, Board, Committee, Manager, or Commissioner named in the Instrument conferring the Power, and all Parties claiming through or under such Person or Persons, on the other hand, continue in force during the Period, if any, mentioned in the Instrument conferring the Power, or if no Power be there mentioned then until Notice of the Revocation or Determination of the Power shall have been given to such Person or Persons as aforesaid.

5. Whenever any such Official Seal as aforesaid shall be affixed to any Document, the Person affixing the same shall, by Writing under his Hand, and written on the Document to which the Seal may have been affixed, certify the Date when and the Place where the same was affixed; and any Document to which any such Seal shall have been duly affixed within the District or Territory or Place the Name whereof is inscribed on such Seal shall bind the Company in the same Way and to the same Extent and have the same Force and Effect as if it had been duly sealed with the Common Seal of the Company.

6. The Powers given by this Act shall be exercised by such Companies only as are or shall be expressly authorized to exercise the same by their Articles of Association, or a Special Resolution passed according to the Provisions of "The Companies Act, 1862," and shall be exercised by such Companies subject to any

Duration of
Powers
granted
under
Sect. 3. of
this Act.

Person
affixing
Seal to
Document
to certify
the Date
when so
affixed.

Effect of
Document
to which
Seal is so
affixed.

Companies
to exercise
Powers of
this Act
only if
authorized
by and
under Re-
strictions in
Articles of
Association
or Special
Resolution.

Directions or Restrictions in their Articles of Association or the Special Resolutions contained.

Section 55 *
of 25 & 26
Vict. c. 89.
not re-
pealed.

7. Nothing in this Act contained shall operate to repeal the Provisions of the Fifty-fifth Section of "The Companies Act, 1862," but such Section shall continue in force, and all Acts done or to be done thereunder shall be as valid and effectual as if this Act had not been passed.

* *Ante*, p. 25.

THE COMPANIES ACT, 1867.

(30 & 31 VICTORIA, CHAPTER 131.)

An Act to amend "The Companies Act, 1862."

Preliminary.

1. This Act may be cited for all purposes as "The Companies Act, 1867." Short Title.

2. The Companies Act, 1862, is herein-after referred to as "the Principal Act"; and the Principal Act and this Act are herein-after distinguished as and may be cited for all Purposes as "The Companies Acts, 1862 and 1867"; and this Act shall, so far as is consistent with the Tenor thereof, be construed as One with the Principal Act; and the Expression "this Act" in the Principal Act, and any Expression referring to the Principal Act which occurs in any Act or other Document, shall be construed to mean the Principal Act as amended by this Act. Act to be construed as One with 25 & 26 Vict c. 89.

3. This Act shall come into force on the First Day of *September* One thousand eight hundred and sixty-seven, which Date is herein-after referred to as the Commencement of this Act. Commencement of Act.

Unlimited Liability of Directors.

4. Where after the Commencement of this Act a Company is formed as a Limited Company under the Principal Act, the Liability of the Directors or Managers of such Company, or the Managing Director, may, if so provided by the Memorandum of Association, be unlimited. Company may have Directors with unlimited Liability

Liability of Directors past and present to Contribute in winding up where Liability is unlimited.

5. The following Modifications shall be made in the Thirty-eighth Section of the Principal Act, with respect to the Contributions to be required in the event of the Winding up of a Limited Company under the Principal Act, from any Director or Manager whose Liability is, in pursuance of this Act, unlimited :

- (1.) Subject to the Provisions herein-after contained, any such Director or Manager, whether past or present, shall, in addition to his Liability (if any) to contribute as an ordinary Member, be liable to contribute as if he were at the Date of the Commencement of such Winding up a Member of an unlimited Company :
- (2.) No Contribution required from any past Director or Manager who has ceased to hold such Office for a Period of One Year or upwards prior to the Commencement of the Winding up shall exceed the Amount (if any) which he is liable to contribute as an ordinary Member of the Company :
- (3.) No Contribution required from any past Director or Manager in respect of any Debt or Liability of the Company contracted after the Time at which he ceased to hold such Office shall exceed the Amount (if any) which he is liable to contribute as an ordinary Member of the Company :
- (4.) Subject to the Provisions contained in the Regulations of the Company no Contribution required from any Director or Manager shall exceed the Amount (if any) which he is liable to contribute as an ordinary Member, unless the Court deems it necessary to require such Contribution in order to satisfy the Debts and Liabilities of the Company, and the Costs, Charges, and Expenses of the Winding up.

Director with unlimited Liability may have Set-off as under Sect. 101 * of 25 & 26 Vict. c. 89.

6. In the event of the Winding up of any Limited Company, the Court, if it think fit, may make to any Director or Manager of such Company whose Liability is unlimited the same Allowance by way of Set-off as

under the One hundred and first Section of the Principal Act it may make to a Contributory where the Company is not limited.

¹ *Ante* p. 17.

* *Ante* p. 43.

7. In any Limited Company in which, in pursuance of this Act, the Liability of a Director or Manager is unlimited, the Directors or Managers of the Company (if any), and the Member who proposes any Person for Election or Appointment to such Office, shall add to such Proposal a Statement that the Liability of the Person holding such Office will be unlimited, and the Promoters, Directors, Managers, and Secretary (if any) of such Company, or One of them, shall, before such Person accepts such Office or acts therein, give him Notice in Writing that his Liability will be unlimited.

Notice to be given to Director on his Election that his Liability will be unlimited.

If any Director, Manager, or Proposer make Default in adding such Statement, or if any Promoter, Director, Manager, or Secretary make Default in giving such Notice, he shall be liable to a Penalty not exceeding One hundred Pounds, and shall also be liable for any Damage which the Person so elected or appointed may sustain from such Default, but the Liability of the Person elected or appointed shall not be affected by such Default.

Penalty for neglect to give Notice

Liability not affected by neglect.

8. Any Limited Company under the Principal Act, whether formed before or after the Commencement of this Act, may, by a Special Resolution, if authorized so to do by its Regulations, as originally framed or as altered by Special Resolution, from Time to Time modify¹ the Conditions contained in its Memorandum of Association so far as to render unlimited the Liability of its Directors or Managers, or of the Managing Director; and such Special Resolution shall be of the same Validity as if it had been originally contained in the Memorandum of Association, and a Copy thereof shall be embodied in or annexed to every Copy of the Memorandum of Association which is issued after the passing of the Resolution, and any Default in this respect shall be deemed to be a Default in complying

Existing Limited Companies may, by Special Resolutions, make Liability of Directors unlimited.

with the Provisions of the Fifty-fourth Section² of the Principal Act, and shall be punished accordingly.

¹ Sect. 12 of the Companies Act, 1862, *ante* p. 5.

² *Ante* p. 24.

*Reduction of Capital and Shares.*¹

Power to
Company to
reduce
Capital by
Special Re-
solution and
Order of
Court regis-
tered by
Registrar.

9. Any Company limited by Shares may, by Special Resolution, so far modify the Conditions contained in its Memorandum of Association, if authorized so to do by its Regulations as originally framed or as altered by Special Resolution, as to reduce its Capital; but no such Resolution for reducing the Capital of any Company shall come into operation until an Order of the Court is registered by the Registrar of Joint Stock Companies, as is herein-after mentioned.²

¹ Sects. 9 to 20 are altered and extended by the Companies Act, 1877, Sects. 3, 4, 5, *post* p. 160 *et seq.*; see also the Companies Act, 1880, Sects. 3 and 4, *post* p. 168.

² Sect. 15, *post* p. 148.

Company to
add "and
Reduced"
to its Name
for a limited
Period.

10. The Company shall, after the Date of the passing of any Special Resolution for reducing its Capital, add to its Name, until such Date as the Court may fix, the Words "and Reduced,"¹ as the last Words in its Name, and those Words shall, until such Date, be deemed to be Part of the Name of the Company within the Meaning of the Principal Act.²

¹ As to Dispensing with these Words, see Companies Act, 1877, Sect. 4 (2), *post* p. 161.

² The Companies Act, 1862, Sects. 41 and 42, *ante* p. 19.

Company to
apply to the
Court for an
Order con-
firming Re-
duction
which may
be made
as herein
provided.

11. A Company which has passed a Special Resolution for reducing its Capital, may apply to the Court by Petition for an Order confirming the Reduction, and on the Hearing of the Petition the Court, if satisfied that with respect to every Creditor of the Company who under the Provisions of this Act is entitled to object to the Reduction, either his Consent to the Reduction has been obtained, or his Debt or Claim has been discharged or has determined, or has been secured as herein-after provided,¹ may make an Order confirming the Reduction on such Terms and subject to such Conditions as it deems fit.

¹ Sect. 14, *post* p. 147.

12. The Expression "the Court"¹ shall in this Act mean the Court which has Jurisdiction to make an Order for Winding up the petitioning Company, and the Eighty-first² and Eighty-third³ Sections of the Principal Act shall be construed as if the Term "Winding up" in those Sections included Proceedings under this Act, and the Court may in any Proceedings under this Act make such Order as to Costs as it deems fit.

Definition of "the Court".

Application of 25 & 26 Vict. c. 89. Sects. 81, 83.

¹ See Winding-up Rules, 4 to 10, Appendix.

² Repealed and replaced by the Companies (Winding-up) Act, 1890, Sect. 1, *post* p. 178.

³ *Ante* p. 86.

13. Where a Company proposes to reduce its Capital, every Creditor of the Company who at the Date fixed by the Court is entitled to any Debt or Claim which, if that Debt were the Commencement of the Winding up of the Company, would be admissible in Proof against the Company, shall be entitled to object to the proposed Reduction, and to be entered in the Lists of Creditors who are so entitled to object.

Creditors entitled to Prove in winding up may object to Reduction.

The Court shall settle a List of such Creditors, and for that Purpose shall ascertain as far as possible without requiring an Application from any Creditor the Names of such Creditors and the Nature and Amount of their Debts or Claims, and may publish Notices fixing a certain Day or Days within which Creditors of the Company who are not entered on the List are to claim to be so entered or to be excluded from the Right of objecting to the proposed Reduction.

List of such Creditors to be settled by the Court.

14. Where a Creditor whose Name is entered on the List of Creditors, and whose Debt or Claim is not discharged or determined, does not consent to the proposed Reduction, the Court may (if it think fit) dispense with such Consent on the Company securing the Payment of the Debt or Claim of such Creditor by setting apart and appropriating in such Manner as the Court may direct, a Sum of such Amount as is hereinafter mentioned; (that is to say,)

Court may dispense with Consent of Creditor on Security being given for his Debt.

(1.) If the full Amount of the Debt or Claim of the Creditor is admitted by the Company, or, though

not admitted, is such as the Company are willing to set apart and appropriate, then the full Amount of the Debt or Claim shall be set apart and appropriated.

- (2.) If the full Amount of the Debt or Claim of the Creditor is not admitted by the Company, and is not such as the Company are willing to set apart and appropriate, or if the Amount is contingent or not ascertained, then the Court may, if it think fit, inquire into and adjudicate upon the Validity of such Debt or Claim, and the Amount for which the Company may be liable in respect thereof, in the same Manner as if the Company were being wound up by the Court, and the Amount fixed by the Court on such Inquiry and Adjudication shall be set apart and appropriated.

Order confirming Reduction and Minute showing certain particulars as to Capital as altered to be Registered.

15. The Registrar of Joint Stock Companies upon the Production to him of an Order of the Court confirming the Reduction of the Capital of a Company, and the Delivery to him of a Copy of the Order and of a Minute¹ (approved by the Court), showing with respect to the Capital of the Company, as altered by the Order, the Amount of such Capital, the Number of Shares in which it is to be divided, and the Amount of each Share, shall register the Order and Minute, and on the Registration the Special Resolution confirmed by the Order so registered shall take effect.

Notice of such Registration shall be published in such Manner as the Court may direct.

The Registrar shall certify under his Hand the Registration of the Order and Minute, and his Certificate shall be conclusive Evidence that all the Requisitions of this Act with respect to the Reduction of Capital have been complied with, and that the Capital of the Company is such as is stated in the Minute.

¹ And see also the Companies Act, 1877, Sect. 4, *post* p. 161.

16. The Minute when registered shall be deemed to be substituted for the corresponding Part of the Memorandum of Association of the Company, and shall be of the same Validity and subject to the same Alterations as if it had been originally contained in the Memorandum of Association; and, subject as in this Act mentioned, no Member of the Company, whether past or present, shall be liable in respect of any Share to any Call or Contribution exceeding in Amount the Difference (if any) between the Amount which has been paid [or (as the case may be) the Reduced Amount, if any, which is to be deemed to have been paid¹] on such Share and the Amount of the Share as fixed by the Minute.

Minute to form part of Memorandum of Association and Members to be liable only for difference between Amounts paid on Shares and Amounts of Shares as fixed by Minute.

¹ Words in brackets inserted by Companies Act, 1907, Sect. 50, and 3rd Schedule, *post* p. 290.

17. If any Creditor who is entitled in respect of any Debt or Claim to object to the Reduction of the Capital of a Company under this Act is, in consequence of his Ignorance of the Proceedings taken with a View to such Reduction, or of their Nature and Effect with respect to his Claim, not entered on the List of Creditors, and after such Reduction the Company is unable, within the Meaning of the Eightieth Section¹ of the Principal Act, to pay to the Creditor the Amount of such Debt or Claim, every Person who was a Member of the Company at the Date of the Registration of the Order and Minute relating to the Reduction of the Capital of the Company, shall be liable to contribute for the Payment of such Debt or Claim an amount not exceeding the Amount which he would have been liable to contribute if the Company had commenced to be wound up on the Day prior to such Registration, and on the Company being wound up, the Court on the Application of such Creditor, and on Proof that he was ignorant of the Proceedings taken with a view to the Reduction, or of their Nature and Effect with respect to his Claim, may, if it think fit, settle a List of such Contributories accordingly, and make and enforce Calls and Orders on the Contributories settled on such List in the same Manner in all respects as if they were ordinary Contributories in a Winding up; but the Provisions of this Section shall not affect the Rights of the Contributories of the Company among themselves.

Saving of Rights of Creditors who are ignorant of Proceedings.

Liability of Members to Contribute for Payment of Debts of such Creditors.

¹ *Ante* p. 84.

Copy of registered Minute to be embodied in every Memorandum of Association subsequently issued.

18. A Minute when registered shall be embodied in every Copy of the Memorandum of Association issued after its Registration; and if any Company makes Default in complying with the Provisions of this Section it shall incur a Penalty¹ not exceeding One Pound for each Copy in respect of which such Default is made, and every Director and Manager of the Company who shall knowingly and wilfully authorize or permit such Default shall incur the like Penalty.¹

¹ Recoverable summarily, Companies Act, 1907, Sect. 49, *post* p. 285.

Penalty for Concealment of Name of Creditor or misrepresentation of his Debt, etc.

19. If any Director, Manager, or Officer of the Company wilfully conceals the Name of any Creditor of the Company who is entitled to object to the proposed Reduction, or wilfully misrepresents the Nature or Amount of the Debt or Claim of any Creditor of the Company, or if any Director or Manager of the Company aids or abets in or is privy to any such Concealment or Misrepresentation as aforesaid, every such Director, Manager, or Officer shall be guilty of a Misdemeanor.

Power to make Rules extended to making Rules concerning Matters in which Jurisdiction is given by this Act.

20. The Powers of making Rules concerning Winding up conferred by the [One hundred and seventieth,¹] One hundred and seventy-first, One hundred and seventy-second, and One hundred and seventy-third Sections of the Principal Act shall respectively extend to making Rules concerning Matters in which Jurisdiction is by this Act given to the Court which has the Power of making an Order to wind up a Company, and until such Rules are made the Practice of the Court in Matters of the same Nature shall, so far as the same is applicable, be followed.

¹ The 170th Section of the Principal Act was Repealed by the Statute Law Revision Act, 1881; the other Sections referred to apply only to Scotch, Stannaries, and Irish Courts.

Sub-division of Shares.

Shares may be divided into Shares of smaller Amount.

21. Any Company limited by Shares may by Special Resolution so far modify the Conditions¹ contained in its Memorandum of Association, if authorized so to do by its Regulations as originally framed or as altered by Special Resolution, as by Sub-division of its existing

Shares or any of them, to divide its Capital, or any Part thereof, into Shares of smaller Amount² than is fixed by its Memorandum of Association.

Provided, that in the Sub-division of the existing Shares the Proportion between the Amount which is paid and the Amount (if any) which is unpaid on each Share of reduced Amount shall be the same as it was in the Case of the existing Share or Shares from which the Share of reduced Amount is derived.

Proportions between Amounts paid and unpaid on Shares to be preserved.

¹ The Companies Act, 1862, Sect. 12, *ante* p. 5.

² Or into Shares of different classes, Companies Act, 1907, Sect. 89, *post* p. 282

22. The Statement of the Number and Amount of the Shares into which the Capital of the Company is divided contained in every Copy of the Memorandum of Association issued after the passing of any such Special Resolution, shall be in accordance with such Resolution; and any Company which makes Default in complying with the Provisions of this Section shall incur a Penalty¹ not exceeding One Pound for each Copy in respect of which such Default is made; and every Director and Manager of the Company who knowingly or wilfully authorizes or permits such Default shall incur the like penalty.¹

Statement of Number and Amount of Shares as altered to be embodied in Memorandum of Association subsequently issued.

¹ Recoverable summarily, Companies Act, 1907, Sect. 49, *post* p. 285.

Associations not for Profit.

23. Where any Association is about to be formed under the Principal Act as a Limited Company, if it proves to the Board of Trade that it is formed for the Purpose of promoting Commerce, Art, Science, Religion, Charity, or any other useful Object, and that it is the Intention of such Association to apply the Profits, if any, or other Income of the Association, in promoting its Objects, and to prohibit the Payment of any Dividend to the Members of the Association, the Board of Trade may by Licence, under the Hand of One of the Secretaries or Assistant Secretaries,¹ direct such Association to be registered with Limited Liability,² without the Addition of the Word "Limited" to its Name, and such Association may be registered

Special Provisions as to Associations formed for Purposes not of Gain.

accordingly, and upon Registration shall enjoy all the Privileges and be subject to the Obligations by this Act imposed on Limited Companies, with the Exceptions that none of the Provisions of this Act that require a Limited Company to use the Word "Limited" as any Part of its Name, or to publish its Name, or to send a List of its Members, Directors, or Managers to the Registrar, shall apply to an Association so registered.

The Licence by the Board of Trade may be³ granted upon such Conditions and subject to such Regulations as the Board thinks fit to impose, and such Conditions and Regulations shall be binding on the Association, and may, at the Option of the said Board, be inserted in the Memorandum and Articles of Association, or in both or One of such Documents.

¹ Or by someone authorized by the President of the Board of Trade, Companies Act, 1907, Sect. 46, *post* p. 284.

² The Companies Act, 1862, Sect. 18, *ante* p. 8.

³ And subsequently revoked, Companies Act, 1907, Sect. 42, *post* p. 283.

Calls upon Shares.

company
may have
some Shares
fully paid
and others
not.

24. Nothing contained in the Principal Act shall be deemed to prevent any Company under that Act, if authorized by its Regulations as originally framed or as altered by Special Resolution, from doing any One or more of the following Things; namely,—

- (1.) Making Arrangements on the Issue of Shares for a Difference between the Holders of such Shares in the Amount of Calls to be paid, and in the Time of Payment of such Calls :
- (2.) Accepting from any Member of the Company who assents thereto the whole or a Part of the Amount remaining unpaid on any Share or Shares held by him, either in discharge of the Amount of a Call payable in respect of any other Share or Shares held by him or without any Call having been made :
- (3.) Paying Dividend in proportion to the Amount paid up on each Share in Cases where a larger Amount is paid up on some Shares than on others.

25.¹ Every Share in any Company shall be deemed and taken to have been issued and to be held subject to the Payment of the whole Amount thereof in Cash, unless the same shall have been otherwise determined by a Contract duly made in Writing, and filed with the Registrar of Joint Stock Companies at or before the Issue of such Shares.

Manner in which Shares are to be issued and held.

¹ *Repealed by the Companies Act, 1900, Sect. 83, post p. 239, and replaced by Sect. 4 (2), post p. 218, and Sect. 7 (1), post p. 221, of that Act; but this Section may possibly still apply to Shares issued before 1901. See Interpretation Act, 1889, Sect. 38, post Appendix; in such cases, see as to relief for non-filing, etc., Companies Act, 1898, post p. 214.*

Transfer of Shares.

26. A Company shall on the Application of the Transferor of any Share or Interest in the Company enter in its Register of Members the Name of the Transferee of such Share or Interest, in the same Manner² and subject to the same Conditions as if the Application for such Entry were made by the Transferee.

Transfer may be registered at Request of Transferor.

¹ The Companies Act, 1862, Sect. 22, *ante* p. 10.

² The Companies Act, 1862, Sect. 35, *ante* p. 15.

Share Warrants to Bearer.

27. In the Case of a Company limited by Shares the Company, if authorized so to do by its Regulations as originally framed or as altered by Special Resolution, and subject to the Provisions of such Regulations, may, with respect to any Share which is fully paid up, or with respect to Stock, issue under their Common Seal a Warrant stating that the Bearer of the Warrant is entitled to the Share or Shares or Stock therein specified, and may provide, by Coupons or otherwise, for the Payment of the future Dividends on the Share or Shares or Stock included in such Warrant, herein-after referred to as a Share Warrant.

Warrants for fully paid-up Shares or Stocks may be issued in Name of Bearer.

28. A Share Warrant shall entitle the Bearer of such Warrant to the Shares or Stock specified in it, and such Shares or Stock may be transferred by the Delivery of the Share Warrant.

Effect of Share Warrant: Transfer of Shares by Delivery.

The Bearer of a Share Warrant may be entered in the Register of Members on delivering up the Warrant for Cancellation.

29. The Bearer of a Share Warrant shall, subject to the Regulations of the Company, be entitled, on surrendering such Warrant for Cancellation, to have his Name entered as a Member in the Register of Members, and the Company shall be responsible for any Loss incurred by any Person by reason of the Company entering in its Register of Members the Name of any Bearer of a Share Warrant in respect of the Shares or Stock specified therein without the Share Warrant being surrendered and cancelled.

Regulations of the Company may make the Bearer of a Share Warrant a Member, but not so as to qualify him as a Director in respect of such Shares.

30. The Bearer of a Share Warrant may, if the Regulations of the Company so provide, be deemed to be a Member of the Company within the Meaning of the Principal Act,¹ either to the full Extent or for such Purposes as may be prescribed by the Regulations:

Provided that the Bearer of a Share Warrant shall not be qualified in respect of the Shares or Stock specified in such Warrant for being a Director or Manager of the Company in Cases where such a Qualification is prescribed by the Regulations of the Company.

¹ The Companies Act, 1862, Sect. 23, *ante* p. 10.

Entries in Register where Share Warrant issued.

31. On the Issue of a Share Warrant in respect of any Share or Stock the Company shall strike out of its Register of Members the Name of the Member then entered therein as holding such Share or Stock as if he had ceased to be a Member, and shall enter in the Register the following Particulars:

(1.) The fact of the Issue of the Warrant;

(2.) A Statement of the Shares or Stock included in the Warrant, distinguishing each Share by its Number:

(3.) The Date of the Issue of the Warrant:

And until the Warrant is surrendered the above Particulars shall be deemed to be the Particulars which are required by the Twenty-fifth Section of the Principal Act to be entered in the Register of Members of a Company; and on the Surrender of a Warrant the Date of such Surrender shall be entered as if it were the Date at which a Person ceased to be a Member.

32. After the Issue by the Company of a Share Warrant the annual Summary required by the Twenty-sixth Section of the Principal Act shall contain the following Particulars,—the total Amount of Shares or Stock for which Share Warrants are outstanding at the Date of the Summary, and the total Amount of Share Warrants which have been issued and surrendered respectively since the last Summary was made, and the Number of Shares or Amount of Stock comprised in each Warrant.

Particulars
as to Share
Warrants
to be con-
tained in
Annual
Summary.

33. There shall be charged on every Share Warrant a Stamp Duty of an Amount equal to Three Times the Amount of the *ad valorem* Stamp Duty which would be chargeable on a Deed transferring the Share or Shares or Stock specified in the Warrant, if the Consideration for the Transfer were the nominal Value of such Share or Shares or Stock.

Stamps on
Share
Warrants.

34. Whosoever forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any Share Warrant or Coupon, or any Document purporting to be a Share Warrant or Coupon, issued in pursuance of this Act, or demands or endeavours to obtain or receive any Share or Interest of or in any Company under the Principal Act, or to receive any Dividend or Money payable in respect thereof, by virtue of any such forged or altered Share Warrant, Coupon, or Document, purporting as aforesaid, knowing the same to be forged or altered, with Intent in any of the Cases aforesaid to defraud, shall be guilty of Felony, and being convicted thereof shall be liable to be kept in Penal Servitude for Life.

Penalties
on Persons
committing
Forgery.

35. Whosoever falsely and deceitfully personates any Owner of any Share or Interest of or in any Company, or of any Share Warrant or Coupon issued in pursuance of this Act, and thereby obtain or endeavours to obtain any such Share or Interest, or Share Warrant or Coupon, or receives or endeavours to receive any Money due to any such Owner, as if such Offender were the true and lawful Owner, shall be guilty of Felony, and being convicted thereof shall be liable to be kept in Penal Servitude for Life.

Penalties
on Persons
falsely per-
sonating
Owners of
Shares on
Share
Warrants.

**Penalties
on Persons
engraving
Plates, etc.**

36. Whosoever, without lawful Authority or Excuse, the Proof whereof shall be on the Party accused, engraves or makes upon any Plate, Wood, Stone, or other Material any Share Warrant or Coupon purporting to be a Share Warrant or Coupon issued or made by any particular Company under and in pursuance of this Act, or to be a blank Share Warrant or Coupon issued or made as aforesaid, or to be a Part of such a Share Warrant or Coupon, or uses any such Plate, Wood, Stone, or other Material for the making or printing any such Share Warrant or Coupon, or any such blank Share Warrant or Coupon, or any Part thereof respectively, or knowingly has in his Custody or Possession any such Plate, Wood, Stone, or other Material, shall be guilty of Felony, and being convicted thereof shall be liable to be kept in Penal Servitude for any Term not exceeding Fourteen Years.

Contracts.

**Contracts
on behalf of
Companies
how to be
made.**

37. Contracts on behalf of any Company under the Principal Act may be made as follows; (that is to say,)

- (1.) Any Contract which if made between private Persons would be by Law required to be in Writing, and if made according to English Law to be under Seal, may be made on behalf of the Company in Writing under the Common Seal of the Company, and such Contract may be in the same Manner varied or discharged :
- (2.) Any Contract which if made between private Persons would be by Law required to be in Writing, and signed by the Parties to be charged therewith, may be made on behalf of the Company in Writing signed by any Person acting under the express or implied Authority of the Company, and such Contract may in the same Manner be varied or discharged :
- (3.) Any Contract which if made between private Persons would by Law be valid although made by Parol only, and not reduced into Writing,

may be made by Parol on behalf of the Company by any Person acting under the express or implied Authority of the Company, and such Contract may in the same Way be varied or discharged :

And all Contracts made according to the Provisions herein contained shall be effectual in Law, and shall be binding upon the Company and their Successors and all other Parties thereto, their Heirs, Executors, or Administrators, as the Case may be.

38.¹ Every Prospectus of a Company, and every Notice inviting Persons to subscribe for Shares in any Joint Stock Company, shall specify the Dates and the Names of the Parties to any Contract entered into by the Company, or the Promoters, Directors, or Trustees thereof, before the Issue of such Prospectus or Notice, whether subject to Adoption by the Directors or the Company, or otherwise; and any Prospectus or Notice not specifying the same shall be deemed fraudulent on the Part of the Promoters, Directors, and Officers of the Company knowingly issuing the same, as regards any Person taking Shares in the Company on the Faith of such Prospectus, unless he shall have had Notice of such Contract.

Prospectus, etc., to specify Dates and Names of Parties to any Contract made prior to issue of such Prospectus, etc.

¹ *Repealed by the Companies Act, 1900, and replaced by Sect. 2 of the Companies Act, 1907, post p. 252, and the unrepealed parts of Sect. 10 of the Companies Act, 1900, post p. 225 et seq.*

Meetings.

39.¹ Every Company formed under the Principal Act after the Commencement of this Act shall hold a General Meeting within Four Months after its Memorandum of Association is registered; and if such Meeting is not held the Company shall be liable to a Penalty not exceeding Five Pounds a Day for every Day after the Expiration of such Four Months until the Meeting is held; and every Director or Manager of the Company, and every Subscriber of the Memorandum of Association, who knowingly authorizes or permits such Default, shall be liable to the same Penalty.

Company to hold Meeting within Four Months after Registration.

¹ *Repealed by the Companies Act, 1900, and replaced by Sect. 12 of that Act, post p. 227, as amended by Sect. 22 of the Companies Act, 1907, post p. 272.*

Winding up.

40. No Contributory of a Company under the Principal Act shall be capable of presenting a Petition for winding up such Company¹ unless the Members of

Contributory when not qualified to present Winding-up Petition

the Company are reduced in Number to less than Seven,² or unless the Shares in respect of which he is a Contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his Name, for a Period of at least Six Months during the Eighteen Months previously to the Commencement of the Winding up, or have devolved upon him through the Death of a former Holder :

Provided that where a Share has during the whole or any Part of the Six Months been held by or registered in the Name of the Wife of a Contributory either before or after her Marriage, or by or in the Name of any Trustee or Trustees for such Wife or for the Contributory, such Share shall for the Purposes of this Section be deemed to have been held by and registered in the Name of the Contributory.

¹ The Companies Act, 1862, Sect. 82, *ante* p. 36.

² The Companies Act, 1862, Sect. 79 (3), *ante* p. 64; not applicable to private Companies under the Companies Act, 1907, Sect. 37, *post* p. 281.

41 to 46. These Sections, which only deal with the Administrative Machinery for winding up Companies are repealed by the Companies (Winding-up) Act, 1890, Sects. 1, 2, 3 (*post* p. 178) whereof replace these repealed Sections.

Saving.

Companies
not ex-
empted
from the
Second or
Third Pro-
visions of
25 & 28
Vict. c. 89.
sect. 196.

47. Nothing in this Act contained shall exempt any Company from the Second or Third Provisions¹ of the One hundred and ninety-sixth Section of the Principal Act, restraining the Alteration of any Provision in any Act of Parliament or Charter.

¹ Apparently a mistake for "third or fourth," *ante* p. 82.

THE JOINT STOCK COMPANIES ARRANGEMENT ACT, 1870.*

* This Act is by the Companies Act, 1907, Sect. 38, *post* p. 282, extended to Companies not in the course of being wound up; in such cases the Act is to apply as though the words in brackets were omitted.

(33 & 34 VICTORIA, CHAPTER 104.)

1. This Act may be cited as "The Joint Stock Short title.
Companies Arrangement Act, 1870."

2. Where any compromise or arrangement shall be proposed between a company [which is in the course of being wound up, either voluntarily¹ or by or under the supervision of the Court,² under the Companies Acts 1862 and 1867, or either of them],* and the creditors³ of such company, or any class of such creditors,² it shall be lawful for the Court,⁴ in addition to any other of its powers,⁵ on the application in a summary way of any creditor [or the liquidator],* to order that a meeting of such creditors or class of creditors shall be summoned in such manner as the Court⁴ shall direct, and if a majority in number representing three-fourths in value of such creditors or class of creditors present either in person or by proxy at such meeting shall agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the Court,⁴ be binding on all such creditors or class of creditors, as the case may be, and also on [the liquidator and contributories of]* the said company.

Where compromise proposed Court of Chancery may order a meeting of creditors, etc., to decide as to such compromise.

¹ The Companies Act, 1862, Sects. 136, 137, *ante* pp. 57, 58.

² The Companies Act, 1862, Sect. 159, *ante* p. 64.

³ Extended to members of the company or any class thereof by the Companies Act, 1900, Sect. 24, *post* p. 236.

⁴ *I.e.*, the Court having jurisdiction to wind up the company, Companies (Winding-up) Act, 1890, Sect. 1, *post* p. 178, and Companies Act, 1907, Sect. 38, *post* p. 282.

⁵ Including power (in a winding up by the Court) to hear a report from the Official Receiver, Winding-up Rule 77, *post* Appendix.

3. The word "Company" in this Act shall mean any company liable to be wound up under "The Companies Act, 1862."

Interpretation.

4. This Act shall be read and construed as part of "The Companies Act, 1862."

Act and Companies Act to be read together.

THE COMPANIES ACT, 1877.

(40 & 41 VICTORIA, CHAPTER 26.)

20 & 21 Vict.
c. 131.

Whereas doubts have been entertained whether the power given by the Companies Act, 1867, to a company of reducing its capital extends to paid-up capital, and it is expedient to remove such doubts: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited for all purposes as the Companies Act, 1877.

Construction of Act.
25 & 26 Vict.
c. 59.
20 & 21 Vict.
c. 131.

2. This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Companies Acts, 1862 and 1867, and the said Acts and this Act may be referred to as "The Companies Acts, 1862, 1867, and 1877."

Construction of "capital" and powers to reduce capital in
20 & 21 Vict.
c. 131.

3. The word "capital" as used in the Companies Act, 1867, shall include paid-up capital; and the power to reduce capital conferred by that Act¹ shall include a power to cancel any lost capital, or any capital unrepresented by available assets, or to pay off any capital which may be in excess of the wants of the company;² and paid-up capital may be reduced either with or without extinguishing or reducing the liability (if any) remaining on the shares of the company, and to the extent to which such liability is not extinguished or reduced it shall be deemed to be preserved, notwithstanding anything contained in the Companies Act, 1867.

¹ Sects. 9 to 20 thereof, *ante* p. 146 *et seq.*

² Or to return accumulated profits, by the Companies Act, 1860, Sect. 3, *post* p. 163.

4. The provisions of the Companies Act, 1867,¹ as amended by this Act, shall apply to any company reducing its capital in pursuance of this Act and of the Companies Act, 1867, as amended by this Act:

Application of provisions of 30 & 31 Vict. c. 131.

Provided that where the reduction of the capital of a company does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital.

- (1.) The creditors of the company shall not, unless the Court otherwise direct, be entitled to object or required to consent to the reduction; and
- (2.) It shall not be necessary before the presentation of the petition for confirming the reduction to add, and the Court may, if it thinks it expedient so to do, dispense altogether with the addition of the words "and reduced" as mentioned in the Companies Act, 1867.²

30 & 31 Vict. c. 131.*

In any case that the Court thinks fit so to do, it may require the company to publish in such manner as it thinks fit the reasons for the reduction of its capital or such other information in regard to the reduction of its capital as the Court may think expedient with a view to give proper information to the public in relation to the reduction of its capital by a company, and, if the Court thinks fit, the causes which led to such reduction.

The minute required to be registered in the case of reduction of capital shall show, in addition to the other particulars required by law, the amount (if any) at the date of the registration of the minute proposed to be deemed to have been paid up on each share.

¹ Sects. 9 to 20 thereof, *ante* p. 146 *et seq.*

² In Sect. 10 thereof, *ante* p. 146.

5. Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed or as altered by special resolution, as to reduce its capital by cancelling any shares which, at the date of the passing of such resolution, have not been

Power to reduce capital by the cancellation of unissued shares.

taken or agreed to be taken by any person; and the provisions¹ of "The Companies Act, 1867," shall not apply to any reduction of capital made in pursuance of this section.

¹ Sects. 9 to 20 thereof, *ante* p. 146.

Certified
copies of
documents
as legal
evidence.
25 & 26 Vict.
c. 89.
30 & 31 Vict.
c. 131.
40 & 41 Vict.
c. 26.

6. And whereas it is expedient to make provision for the reception as legal evidence of certificates of incorporation other than the original certificates, and of certified copies of or extracts from any documents filed and registered under the Companies Acts, 1862 to 1877: Be it enacted, that any certificate¹ of the incorporation of any company given by the registrar or by any assistant registrar for the time being shall be received in evidence as if it were the original certificate; and any copy of or extract from any of the documents² or part of the documents kept and registered at any of the offices for the registration of joint stock companies in England, Scotland, or Ireland if duly certified to be a true copy under the hand of the registrar or one of the assistant registrars for the time being, and whom it shall not be necessary to prove to be the registrar or assistant registrar, shall, in all legal proceedings, civil or criminal, and in all cases whatsoever, be received in evidence as of equal validity with the original document.

¹ The Companies Act, 1900, Sect. 1, *post* p. 216.

² The Companies Act, 1862, Sect. 174 (5), *ante* p. 72.

THE COMPANIES ACT, 1879.

(42 & 43 VICTORIA, CHAPTER 76.)

1. This Act may be cited as the Companies Act, 1879. Short title
 2. This Act shall not apply to the Bank of England. Act not to apply to Bank of England.
 3. This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Companies Acts, 1862, 1867, and 1877. Act to be construed with 25 & 26 Vict. c. 89, 30 & 31 Vict. c. 131, and 40 & 41 Vict. c. 26.
 4. Subject as in this Act mentioned, any company registered before or after the passing of this Act as an unlimited¹ company may register under the Companies Acts, 1862 to 1879, as a limited company, or any company already registered as a limited company may re-register² under the provisions of this Act. Registration anew of company. 25 & 26 Vict. c. 89, 30 & 31 Vict. c. 131, 40 & 41 Vict. c. 26, & 42 & 43 Vict. c. 76.
- The registration of an unlimited¹ company as a limited company in pursuance of this Act shall not affect or prejudice any debts, liabilities, obligations, or contracts incurred or entered into by, to, with, or on behalf of such company prior to registration, and such debts, liabilities, contracts, and obligations may be enforced in manner provided by Part VII.³ of the Companies Act, 1862, in the case of a company registering in pursuance of that Part. 25 & 26 Vict. c. 89.

¹ See Companies Act, 1862, Sect. 10, *ante* p. 4.

² See Sect. 9, *post* p. 166.

³ The Companies Act, 1862, Sects. 195 and 196 (5), *ante* pp. 82, 83.

Reserve
capital of
company
how pro-
vided.
25 & 26 Vict.
c. 89.
30 & 31 Vict.
c. 131.
40 & 41 Vict.
c. 26.
42 & 43 Vict.
c. 76.

5. An unlimited company¹ may, by the resolution² passed by the members when assenting to registration as a limited company under the Companies Acts, 1862 to 1879, and for the purpose of such registration, or otherwise, increase the nominal amount of its capital by increasing the nominal amount of each of its shares.

Provided always, that no part of such increased capital shall be capable of being called up, except in the event of and for the purposes of the company being wound up.

* And, either in conjunction with or without any such increase of nominal capital, an unlimited¹ company may, by such resolution as aforesaid, provide that a portion of its uncalled capital shall not be capable of being called up, except in the event of and for the purposes of the company being wound up.*

A limited company may by a special resolution declare that any portion of its capital which has not been already called up shall not be capable of being called up, except in the event of and for the purpose of the company being wound up; and thereupon such portion of capital shall not be capable of being called up, except in the event of and for the purposes of the company being wound up.

¹ Companies Act, 1862, Sect. 10, *ante* p. 4.

² The Companies Act, 1862, Sect. 179 (5), *ante* p. 76.

* This clause was altered to read as here printed by Companies Act, 1907, Sect. 50, and 3rd Schedule, *post* p. 290.

Liability of
bank of
issue un-
limited in
respect of
notes.

6. A bank of issue registered as a limited company, either before or after the passing of this Act, shall not be entitled to limited liability in respect of its notes; and the members thereof shall continue liable in respect of its notes in the same manner as if it had been registered as an unlimited company; but in case the general assets of the company are, in the event of the company being wound up, insufficient to satisfy the claims of both the note-holders and the general creditors, then the members, after satisfying the remaining demands of the note-holders, shall be liable to contribute towards payment of the debts of the general creditors a sum equal to the amount received by the note-holders out of the general assets of the company.

For the purposes of this section the expression "the general assets of the company" means the funds available for payment of the general creditor as well as the note-holder.

It shall be lawful for any bank of issue registered as a limited company to make a statement on its notes to the effect that the limited liability does not extend to its notes, and that the members of the company continue liable in respect of its notes in the same manner as if it had been registered as an unlimited company.

7.¹ (1.) Once at the least in every year the accounts of every banking company registered after the passing of this Act as a limited company shall be examined by an auditor or auditors, who shall be elected annually by the company in general meeting. Audit of accounts of banking companies.

(2.) A director or officer of the company shall not be capable of being elected auditor of such company.

(3.) An auditor on quitting office shall be re-eligible.

(4.) If any casual vacancy occurs in the office of any auditor the surviving auditor or auditors (if any) may act, but if there is no surviving auditor, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the vacancy or vacancies in the auditorship.

(5.) Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company; and any auditor may, in relation to such books and accounts, examine the directors or any other officer of the company.

Provided that if a banking company has branch banks beyond the limits of Europe, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as may have been transmitted to the head office of the banking company in the United Kingdom.

¹(6.) The auditor or auditors shall make a report to the members on the accounts examined by him or them, and on every balance sheet laid before the company in general meeting

during his or their tenure of office; and in every such report shall state whether, in his or their opinion, the balance sheet referred to in the report is a full and fair balance sheet properly drawn up, so as to exhibit a true and correct view of the state of the company's affairs, as shown by the books of the company; and such report shall be read before the company in general meeting.

(7.) The remuneration of the auditor or auditors shall be fixed by the general meeting appointing such auditor or auditors, and shall be paid by the company.

¹ *Repealed by Companies Act, 1907, Sect. 50, and 3rd Schedule, post p. 290; as to audit, see the Companies Act, 1900, Sects. 21 and 22, post pp. 234, 235, and Companies Act, 1907, Sect. 19, post p. 270.*

Signature
of balance
sheet.

8. Every balance sheet submitted to the annual or other meeting of the members of every banking company registered after the passing of this Act as a limited company shall be signed by the auditor or auditors, and by the secretary or manager (if any), and by the directors of the company, or three of such directors at the least.

Applica-
tion of
25 & 26 Vict.
c. 89,
30 & 31 Vict.
c. 131., and
40 & 41 Vict.
c. 26,
25 & 26 Vict.
c. 89,
30 & 31 Vict.
c. 131.,
40 & 41 Vict.
c. 26., and
42 & 43 Vict.
c. 76.

9. On the registration, in pursuance of this Act,¹ of a company which has been already registered, the registrar shall make provision for closing the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company;² but, save as aforesaid, the registration of such a company shall take place in the same manner and have the same effect as if it were the first registration of that company under the Companies Acts, 1862 to 1879, and as if the provisions of the Acts under which the company was previously registered and regulated had been contained in different Acts of Parliament from those under which the company is registered as a limited company.

¹ *I.e.*, under Sect. 4 hereof, *ante* p. 163.

² The Companies Act, 1862, Sects. 183 to 185, *ante* p. 77 *et seq.*

10. A company authorised to register under this Act may register thereunder and avail itself of the privileges conferred by this Act, notwithstanding any provisions¹ contained in any Act of Parliament, royal charter, deed of settlement, contract of co-partnery, cost book regulations, letters patent, or other instrument constituting or regulating the company.

¹The Companies Act, 1862, Sect. 179 (1), (2), *ante* p. 75.

THE COMPANIES ACT, 1880.

(43 VICTORIA, CHAPTER 19.)

Short title. 1. This Act may be cited for all purposes as the Companies Act, 1880.

Construction of Acts 25 & 26 Vict. c. 59., 30 & 31 Vict. c. 131., 40 & 41 Vict. c. 26., 42 & 43 Vict. c. 76. 2. This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Companies Acts, 1862, 1867, 1877, and 1879.

Accumulated profits may be returned to shareholders in reduction of paid-up capital.

3. When any Company has accumulated a sum of undivided profits, which with the consent of the shareholders may be distributed among the shareholders in the form of a dividend or bonus, it shall be lawful for the Company, by special resolution, to return the same, or any part thereof, to the shareholders in reduction of the paid-up capital of the Company,¹ the unpaid capital being thereby increased by a similar amount. The powers vested in the directors of making calls upon the shareholders in respect of moneys unpaid upon their shares shall extend to the amount of the unpaid capital as augmented by such reduction.

¹ The Companies Act, 1867, Sects. 9 to 20, *ante* p. 146 *et seq.*, and the Companies Act, 1877, Sects. 3, 4, *ante* pp. 160, 161.

No resolution to take effect till particulars have been registered.

4. No such special resolution as aforesaid¹ shall take effect until a memorandum, showing the particulars² required by law in the case of a reduction of capital by order of the court, shall have been produced to and registered by the Registrar of Joint Stock Companies.

¹ Preceding section.

² The Companies Act, 1867, Sect. 15, *ante* p. 148, and the Companies Act, 1877, Sect. 4, *ante* p. 161.

5. Upon any reduction of paid-up capital made in pursuance of this Act, it shall be lawful for any shareholder, or for any one or more of several joint shareholders, within one month after the passing of the special resolution for such reduction, to require the Company to retain, and the Company shall retain accordingly, the whole of the moneys actually paid upon the shares held by such person, either alone or jointly with any other person or persons, and which, in consequence of such reduction, would otherwise be returned to him or them, and thereupon the shares in respect of which the said moneys shall be so retained shall, in regard to the payment of dividends thereon, be deemed to be paid up to the same extent only as the shares on which payment as aforesaid has been accepted by the shareholders in reduction of their paid-up capital, and the Company shall invest and keep invested the moneys so retained in such securities authorised for investment by trustees as the Company shall determine, and upon the money so invested, or upon so much thereof as from time to time exceeds the amount of calls subsequently made upon the shares in respect of which such moneys shall have been retained, the Company shall pay such interest as shall be received by them from time to time on such securities, and the amount so retained and invested shall be held to represent the future calls which may be made to replace the capital so reduced on those shares, whether the amount obtained on sale of the whole or such proportion thereof as represents the amount of any call when made, produces more or less than the amount of such call.

Power to any shareholder within one month after passing of resolution to require Company to retain moneys paid upon shares held by such person.

6. From and after such reduction of capital the Company shall specify in the annual lists of members, to be made by them in pursuance of the twenty-sixth section¹ of the Companies Act, 1862, the amounts which any of the shareholders of the Company shall have required the Company to retain, and the Company shall have retained accordingly, in pursuance of the fifth section of this Act, and the Company shall also specify in the statements of account laid before any

Company to specify amounts which shareholders have required them to retain under s. 5; also to specify amounts of profits returned to shareholders. 25 & 26 Vict. c. 89

general meeting of the Company the amount of the undivided profits of the Company which shall have been returned to the shareholders in reduction of the paid-up capital of the Company under this Act.

¹ *Ante* p. 72.

power of
Registrar
to strike
names of
defunct
companies
off register.

7.¹—(1.) Where the Registrar of Joint Stock Companies has reasonable cause to believe that a Company, whether registered before or after the passing of this Act, is not carrying on business or in operation, he shall send to the Company by post a letter inquiring whether the Company is carrying on business or in operation.

(2.) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the Company by post a registered letter referring to the first letter, and stating that no answer thereto has been received by the Registrar, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Gazette with a view to striking the name of the Company off the register.

(3.) If the Registrar either receives an answer from the Company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer thereto, the Registrar may publish in the Gazette and send to the Company a notice that at the expiration of three months from the date of that notice the name of the Company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the Company will be dissolved.²

(4.) At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by such Company, strike the name of such Company off the register, and shall publish notice thereof in the Gazette, and on the publication in the Gazette of such last-mentioned notice the Company whose name is so struck off shall be dissolved². Provided that the liability (if any) of every director,

managing officer, and member of the Company shall continue and may be enforced as if the Company had not been dissolved.

(5.) If any Company or member [or creditor] thereof feels aggrieved by the name of such Company having been struck off the register in pursuance of this section, the Company or member [or creditor] may apply to the superior court in which the Company is liable to be wound up; and such court, if satisfied that the Company was at the time of the striking off carrying on business or in operation, [or otherwise] that it is just so to do, may order the name of the Company to be restored to the register, and thereupon the Company shall be deemed to have continued in existence as if the name thereof had never been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the Company and all other persons in the same position as nearly as may be as if the name of the Company had never been struck off.

*This sub-
sect. is
altered by
sect. 26 (2)
of the Com-
panies Act,
1900, post p.
236, by the
insertion of
the words in
brackets.*

(6.) A letter or notice authorised or required for the purposes of this section to be sent to a Company may be sent by post addressed to the Company at its registered office, or, if no office has been registered, addressed to the care of some director or officer of the Company, or if there be no director or officer of the Company whose name and address are known to the Registrar, the letter or notice (in indetical form) may be sent to each of the persons who subscribed the memorandum of association, addressed to him at the address mentioned in that memorandum.

(7.) In the execution of his duties under this section the Registrar shall conform to any regulations which may be from time to time made by the Board of Trade.

(8.) In this section the Gazette means, as respects Companies whose registered office is in England, the London Gazette; as respects Companies whose registered office is in Scotland, the Edinburgh Gazette; and as respects Companies whose registered office is in Ireland, the Dublin Gazette.

¹ The Companies Act, 1900, Sect. 26 (1), *post* p. 236.

² Semble, such a dissolution is not within Companies Act, 1907, Sect. 31 (2), *post* p. 277.

THE COMPANIES (COLONIAL REGISTERS) ACT, 1883.

(46 & 47 VICTORIA, CHAPTER 30.)

Short title
and con-
struction.

1. This Act may be cited for all purposes as the Companies (Colonial Registers) Act, 1883; and this Act shall, so far as is consistent with the tenor thereof, be construed as one with the Companies Acts, 1862 to 1880, and the said Acts and this Act may be referred to as the Companies Acts, 1862 to 1883.

Definitions.

2. In this Act the term "company" means a company registered under the Companies Act, 1862, and having a capital divided into shares; the term "shares" includes stock; the term "colony" does not include any place within the United Kingdom, the Isle of Man, or the Channel Islands, but includes such territories as may for the time being be vested in Her Majesty by virtue of an Act of Parliament for the government of India, and any plantation, territory, or settlement situate elsewhere within Her Majesty's dominions.¹

¹ And the Commonwealth of Australia, Companies Act, 1907, Sect. 43, *post* p. 284.

Power for
companies
to keep
colonial
registers.

3. (1.) Any company whose objects comprise the transaction of business in a colony may, if authorised so to do by its regulations, as originally framed or as altered by special resolution, cause to be kept in any colony in which it transacts business a branch register or registers of members resident in such colony.

(2.) The company shall give to the registrar of joint stock companies notice of the situation of the office where any such branch register (in this Act called a colonial register) is kept, and of any change therein, and of the discontinuance of any such office in the event of the same being discontinued.

(3.) A colonial register shall, as regards the particulars entered therein, be deemed to be a part of the company's register of members, and shall be *prima facie* evidence of all particulars entered therein. Any such register shall be kept in the manner provided by the Companies Acts, 1862 to 1880,¹ with this qualification, that the advertisement mentioned in section thirty-three² of the Companies Acts, 1862, shall be inserted in some newspaper circulating in the district wherein the register to be closed is kept, and that any competent court in the colony where such register is kept shall be entitled to exercise the same jurisdiction of rectifying the same as is by section thirty-five³ of the Companies Act, 1862, vested, as respects a register, in England and Ireland in Her Majesty's superior courts of law or equity, and that all offences under section thirty-two⁴ of the Companies Act, 1862, may, as regards a colonial register, be prosecuted summarily before any tribunal in the colony where such register is kept having summary criminal jurisdiction. 25 & 26 Vict
c. 89.

(4.) The company shall transmit to its registered office a copy of every entry in its colonial register or registers as soon as may be after such entry is made, and the company shall cause to be kept at its registered office, duly entered up from time to time, a duplicate or duplicates of its colonial register or registers. The provisions of section thirty-two⁴ of the Companies Act, 1862, shall apply to every such duplicate, and every such duplicate shall, for all the purposes of the Companies Acts, 1862 to 1880, be deemed to be part of the register of members of the company.

(5.) Subject to the provisions of this Act with respect to the duplicate register, the shares registered in a colonial register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a colonial register shall, during the continuance of the registration of such shares in such colonial register, be registered in any other register.

(6.) The company may discontinue to keep any

colonial register, and thereupon all entries in that register shall be transferred to some other colonial register kept by the company in the same colony, or to the register of members kept at the registered office of the company.

(7.) In relation to stamp duties the following provisions shall have effect:—

(a.) An instrument of transfer of a share registered in a colonial register under this Act shall be deemed to be a transfer of property situated out of the United Kingdom, and unless executed in any part of the United Kingdom shall be exempt from British stamp duty.

(b.)⁵ Upon the death of a member registered in a colonial register under this Act, the share or other interest of the deceased member shall for the purposes of this Act so far as relates to British duties be deemed to be part of his estate and effects situated in the United Kingdom for or in respect of which probate or letters of administration is or are to be granted, or whereof an inventory is to be exhibited and recorded in like manner as if he were registered in the register of members kept at the registered office of the company.

(8.) Subject to the provisions of this Act, any company may, by its regulations as originally framed, or as altered by special resolution, make such provisions as it may think fit respecting the keeping of colonial registers.

¹ *I.e.*, in the Companies Act, 1862, Sects. 25 to 36, *ante* p. 11. *et seq.*, and (as to share warrants) in the Companies Act, 1867, Sect. 31, *ante* p. 154.

² *Ante* p. 14.

³ *Ante* p. 15.

⁴ *Ante* p. 14.

⁵ But now *see* the Revenue Act, 1889 (52 & 53 Vict., c. 42) Sect. 18, reversing this Sub-sect. where such member dies domiciled outside the United Kingdom.

THE COMPANIES (MEMORANDUM OF ASSOCIATION) ACT, 1890.

(53 & 54 VICTORIA, CHAPTER 62.)

1.—(1.) Subject to the provisions of this Act, a company registered under the Companies Acts, 1862 to 1886, may, by special resolution, alter the provisions¹ of its memorandum of association or deed of settlement,² with respect to the objects of the company so far as may be required for any of the purposes herein-after specified,³ or alter the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, either with or without any such alteration as aforesaid with respect to the objects of the company, but in no case shall any such alteration take effect until confirmed on petition by the court⁴ which has jurisdiction to make an order for winding up the company.

Power for
Company
to alter
objects or
form of
constitution
subject to
confirmation
by
court.

(2.) Before confirming any such alteration the court must be satisfied—

- (a.) that sufficient notice has been given to every holder of debentures or debenture stock of the company, and any persons or class of persons whose interests will, in the opinion of the court, be affected by the alteration ; and
- (b.) that, with respect to every creditor who in the opinion of the court is entitled to object, and who signifies his objection in manner directed by the court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the court.

Provided that the court may, in the case of any person or class of persons, for special reasons, dispense with the notice required by this section.

(3.) An order confirming any such alteration may be made on such terms and subject to such conditions as

to the court seems fit, and the court may make such orders as to costs as it deems proper.

(4.) The court shall, in exercising its discretion under this Act, have regard to the rights and interests of the members of the company, or of any class of those members, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members; and the court may give such directions and make such orders as it may think expedient for the purpose of facilitating any such arrangement or carrying the same into effect: Provided always, that it shall not be lawful to expend any part of the capital of the company in any such purchase.

(5.) The court may confirm, either wholly or in part, any such alteration as aforesaid with respect to the objects of the company if it appears that the alteration is required in order to enable the company—

- (a.) To carry on its business more economically or more efficiently; or
- (b.) To attain its main purpose by new or improved means; or
- (c.) To enlarge or change the local area of its operations; or
- (d.) To carry on some business or businesses which under existing circumstances may conveniently or advantageously be combined with the business of the company; or
- (e.) To restrict or abandon any of the objects specified in the memorandum of association or deed of settlement.

Registration of order together with memorandum as altered or substituted memorandum and articles and consequences thereof.

¹ The Companies Act, 1862, Sect. 12, *ante* p. 5, and the Companies Act, 1907, Sect. 39, *post* p. 282 (reorganisation of capital).

² The Companies Act, 1862, Sect. 196, *ante* p. 82, and Sect. 3 (3) hereof, *post* p. 177.

³ Sub-sect. (5) of this Section.

⁴ Specified in the Companies (Winding-up) Act, 1890, Sect. 1, *post* p. 178.

2.—(1.) Where a company¹ has altered the provisions of its memorandum of association or deed of settlement with respect to the objects of the company, or has

altered the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, and such alteration has been confirmed by the court, an office copy of the order confirming such alteration, together with a printed copy of the memorandum of association or deed of settlement so altered, or together with a printed copy of the substituted memorandum and articles of association (as the case may be), shall be delivered by the company to the Registrar of Joint Stock Companies within fifteen days from the date of the order, and the registrar shall register the same, and shall certify under his hand the registration thereof, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to such alteration and the confirmation thereof have been complied with, and thenceforth (but subject to the provisions of this Act) the memorandum or deed of settlement so altered shall be the memorandum of association or deed of settlement of the company, or, as the case may be, such substituted memorandum and articles of association shall apply to the company in the same manner as if the company were a company registered under Part I. of the Companies Act, 1862, with such memorandum and articles of association, and the company's deed of settlement shall cease to apply to the company.

(2.) If a company makes default in delivering to the registrar any document required by this Act to be delivered to him the company shall be liable to a penalty not exceeding ten pounds for every day during which it is in default.

¹ As to companies established outside, but trading within, the United Kingdom, *see* Companies Act, 1907, Sect. 35, *post* p. 279.

3.—(1.) This Act may be cited as the Companies (Memorandum of Association) Act, 1890.

Short title
and con-
struction.

(2.) This Act and the Companies Acts, 1862 to 1886, shall be construed as one Act, and may be cited collectively as the Companies Acts, 1862 to 1890.

(3.) In this Act the expression "deed of settlement" includes any contract of co-partnery or other instrument constituting or regulating the company and not being an Act of Parliament, a royal charter or letters patent.

THE COMPANIES (WINDING-UP) ACT, 1890.

Jurisdic-
tion to wind
up com-
panies.

1.—(1.) The courts¹ having jurisdiction to wind up companies in England and Wales shall be the High Court, the chancery courts of the counties palatine of Lancaster and Durham, the county courts, and the Stannaries court.

(2.) Where the amount of the capital of a company paid up or credited as paid up exceeds ten thousand pounds, a petition to wind up the company or to continue the winding up of the company under the supervision of the court shall be presented to the High Court, or, in the case of a company situate within the jurisdiction of either of the palatine courts aforesaid, either to the High Court or to the palatine court having jurisdiction.

(3.) Where the amount of the capital of a company paid up or credited as paid up does not exceed ten thousand pounds, and the registered office of the company is situate within the jurisdiction of a county court having jurisdiction under this Act, a petition to wind up the company or to continue the winding up of the company under the supervision of the court shall be presented to that county court.

(4.) Provided that where a company is formed for working mines within the Stannaries and is not shown to be actually working mines beyond the limits of the Stannaries, or to be engaged in any other undertaking beyond those limits, or to have entered into a contract for such working or undertaking, a petition to wind up the company or to continue the winding up of the company under the supervision of the court shall be

presented to the Stannaries court whatever may be the amount of the capital of the company and wherever the registered office of the company is situate.

(5.) The Lord Chancellor may by order exclude a county court from having jurisdiction under this Act, and for the purposes of such jurisdiction may attach its district, or any part thereof, to the High Court or to any other county court, and may revoke or vary any such order. In exercising his powers under this section the Lord Chancellor shall provide¹ that a county court shall not have jurisdiction under this Act unless it has for the time being jurisdiction in bankruptcy.

(6.) Every court having jurisdiction under this Act to wind up a company shall for the purposes of that jurisdiction have all the powers of the High Court, and every prescribed officer of the court shall perform any duties which an officer of the High Court may discharge by order of the judge thereof or otherwise in relation to the winding up of a company.

(7.) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong court.

¹ Winding up Rules, 4 to 10, *post* Appendix.

² This was done by order dated 29th November, 1890.

2. Subject to general rules and to orders of transfer made under the authority of the Supreme Court of Judicature Act, 1873, and the Acts amending it, the jurisdiction of the High Court under this Act shall, as the Lord Chancellor may from time to time by general order direct, be exercised, either generally or in specified classes of cases, either by such judge or judges of the Chancery Division of the High Court as the Lord Chancellor may assign to exercise that jurisdiction, or by the judge who, for the time being, exercises the bankruptcy jurisdiction of the High Court.

Conduct of winding up business in High Court. 36 & 37 Vict. c. 66.

3.—(1.) The winding up of a company or any proceedings therein may at any time and at any stage, and either with or without application from any of the parties thereto, be transferred¹ from one court to another court, or may be retained in the court in which the proceedings were commenced, although it may not be the court in which the proceedings ought to have been commenced.

Transfer of proceedings.

(2.) The powers of transfer¹ given by the foregoing provisions of this section may, subject to and in accordance with general rules, be exercised by the Lord Chancellor or by any judge of the High Court having jurisdiction under this Act, or, as regards any case within the jurisdiction of any other court, by the judge of that court.

(3.) If any question arises in any winding up proceeding in a county court or in the Stannaries court which all the parties to the proceeding, or which one of them and the judge of the court, may desire to have determined in the first instance in the High Court, the judge shall state the facts in the form of a special case for the opinion of the High Court, and thereupon the special case and the proceedings, or such of them as may be required, shall be transmitted to the High Court for the purposes of the determination.

¹ Rules 40 to 47, *post* Appendix.

Provisions
as to liquidator.

4.—(1.) On an order being made by the court for winding up a company the officer herein-after mentioned¹ shall, by virtue of his office, become the provisional liquidator² of the company, and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such.

(2.) The said officer shall be the official receiver, if any, attached to the court for bankruptcy purposes, or if there is more than one such official receiver, then such one of them as the Board of Trade may appoint, or, if there is no such official receiver, then an officer appointed for the purpose by the Board of Trade. Any such officer shall for the purpose of his duties under this Act be styled the official receiver.

(3.) When a person³ other than the official receiver is appointed liquidator of a company he shall be styled liquidator and not official liquidator of the company, and the provisions of the Companies Acts⁴ relating to the official liquidator shall, in their application to him, be construed as if the word “official” were omitted therefrom. Such a person shall not be capable of acting as liquidator until he has notified his appointment to the registrar of joint stock companies and

given⁵ security in the manner prescribed to the satisfaction of the Board of Trade. He shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid, as may be requisite for enabling that officer to perform his duties under this Act.

(4.) If any vacancy occurs in the office of liquidator of a company, the official receiver shall, by virtue of his office, be the liquidator during the vacancy.

(5.) The official receiver may be appointed by the court provisional liquidator⁶ of the company at any time after the presentation of a petition and before a winding-up order has been made.

(6.) Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company the official receiver may be so appointed.

¹ *I.e.*, the official receiver, *see* the next Sub.-sect. and Rule 181, *post* Appendix.

² The Companies Act, 1862, Sect. 85, *ante* p. 37, and Rule 31, *post* Appendix.

³ Rule 58, *post* Appendix.

⁴ The Companies Act, 1862, Sects. 92 to 96, *ante* p. 39 *et seq.*, and Sect. 203, *ante* p. 89.

⁵ Rule 60, *post* Appendix.

⁶ The Companies Act, 1862, Sect. 85, *ante* p. 37.

5.—(1.) Where the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment¹ of a special manager of the estate or business of the company other than himself, apply to the court to, and the court may on such application, appoint a special manager thereof during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.

Power to
appoint
special
manager.

(2.) The special manager shall give such security² and account³ in such manner as the Board of Trade direct.

(3.) The special manager shall receive such remuneration⁴ as may be fixed by the court.

¹ Rule 48, *post* Appendix.

² Rule 60, *post* Appendix.

³ Rule 49, *post* Appendix.

⁴ Rule 169, *post* Appendix.

ting of
itors.

6*—(1.) When the court has made an order¹ for winding up a company the official receiver shall summon separate meetings² of the creditors and contributories of the company for the purpose of—

- (a) determining whether or not an application is to be made to the court for appointing³ a liquidator in the place of the official receiver; and
- (b) determining whether or not an application is to be made to the court for the appointment of a committee of inspection⁴ to act with the liquidator, and who are to be the members of such committee if appointed.

The court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any of the matters mentioned in the foregoing provisions the court shall decide the difference and make such order thereon as the court may think fit.

(2.) The provisions of the First Schedule⁵ to this Act shall, subject to such modifications as may be made therein by general rules,² apply to any meeting summoned in pursuance of this section.

(3.) In case a liquidator is not appointed by the court the official receiver shall be the liquidator of the Company.

* Cf. Companies Act, 1907, Sect. 27, *post* p. 275, which enacts similar provisions for a voluntary winding up.

¹ Rules 37 to 41, *post* Appendix, and Sect. 14, *post* Appendix.

² Rules 50 to 52, *post* Appendix.

³ Rule 58, *post* Appendix.

⁴ Sect. 9, *post* Appendix.

⁵ *Post* Appendix.

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7.—(1.) Where the court has made an order for winding up a company, there shall be made out and submitted to the official receiver a statement¹ as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of the assets, debts, and liabilities of the company, the names, residences, and occupations of the creditors of the company the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

(2.) The statement shall be submitted and verified

by one or more of the persons who are at the time of the winding-up order the directors and by the person who is at that time the secretary or other chief officer of the company, or by such of the persons being or or having been directors or officers of the company or having taken part in the formation of the company at any time within one year before the order for winding up the company, as the official receiver, subject to the direction of the court, may require to submit, and verify the same.

(3.) The statement shall be submitted within fourteen days from the date of the order, or within such extended time² as the official receiver or the court may for special reasons appoint.

(4.) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid³ by the official receiver, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of such statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the court.

(5.) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding ten pounds for every day during which the default continues.

(6.) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court and shall be punishable accordingly on the application of the liquidator or of the official receiver.

¹ Rules 53 to 57, *post* Appendix.

² Rule 54, *post* Appendix.

³ Rule 57, *post* Appendix.

Report on
winding up
and proceedings
thereupon.

8.—(1.) Where the court has made an order for winding up a company, the official receiver shall, as soon as practicable after receipt of the statement¹ of

the company's affairs, submit a preliminary report² to the court—

- (a) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities; and
- (b) if the company has failed, as to the causes of the failure; and
- (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

(2.) The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in the promotion or formation of the company or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

(3.) The court may, after consideration³ of any such report, direct that any person who has taken any part in the promotion or formation of the company, or has been a director or officer of the company, shall attend before the court on a day appointed by the court for that purpose, and be publicly examined⁴ as to the promotion or formation of the company, or as to the conduct of the business of the company, or as to his conduct and dealings as director or officer of the company.

(4.) The official receiver shall take part in the examination, and for that purpose may, if specially authorised by the Board of Trade in that behalf, employ a solicitor with or without counsel.

(5.) The liquidator where the official receiver is not the liquidator and any creditor or contributory of the company may also take part in the examination either personally or by solicitor or counsel.

(6.) The court may put such questions to the person examined as to the court may seem expedient.

(7.) The person examined shall be examined on oath, and it shall be his duty to answer all such questions as the court may put or allow to be put to him. The person examined shall at his own cost, prior to such examination, be furnished with a copy of the official receiver's report, and shall also at his own cost be entitled to employ at such examination a solicitor with or without counsel, who shall be at liberty to put such questions to the person examined as the court may deem just for the purpose of enabling that person to explain or qualify any answers given by him. Provided always, that if such person is, in the opinion of the court, exculpated from any charges made or suggested against him, the court may allow him such costs as the court in its discretion may think fit. Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed⁵ by, the person examined, and may thereafter be used in evidence against him.⁶ They shall also be open to the inspection of any creditor or contributory of the company at all reasonable times.

(8.) The court may, if it thinks fit,⁷ adjourn the examination from time to time.

(9.) A public examination under this section may, if the court so directs, and subject to general rules, be held⁸ before any judge of county courts, or before any officer of the Supreme Court, being an official referee, master, registrar in bankruptcy, or chief clerk, or before any district registrar of the High Court named for the purpose by the Lord Chancellor, or in the case of companies being wound up by a Palatine court, before a registrar of that court, and the powers of the court under sub-sections six, seven, and eight of this section may (except as to costs) be exercised by the person before whom the examination is held.

¹ See preceding section.

² Rule 62, *post* Appendix.

³ Rules 63 and 64, *post* Appendix.

⁴ Rules 65 to 69, *post* Appendix.

⁵ And afterwards filed, Rule 70, *post* Appendix.

⁶ And see Rule 73, *post* Appendix. ⁷ Rule 68 (2), *post* Appendix.

⁸ Rule 65, *post* Appendix.

9.—(1.) A committee of inspection¹ appointed in pursuance of this Act shall consist of persons being creditors or contributories of the company or persons holding general powers of attorney from such persons in such proportions as may be agreed on by the meetings of

Committee
of Inspec-
tion.

creditors and contributories or as, in case of difference, may be determined by the court.

(2.) The committee of inspection shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month; and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3.) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present at the meeting.

(4.) Any member of the committee may resign his office by notice in writing signed by him, and delivered to the liquidator.

(5.) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members of the committee who together with himself represent the creditors or contributories as the case may be, his office shall thereupon become vacant.

(6.) Any member of the committee representing creditors may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given, stating the object of the meeting. Any member of the committee representing contributories may be removed by an ordinary resolution at any meetings of contributories, of which seven days' notice has been given stating the object of the meeting.

(7.) On a vacancy occurring in the office of a member of the committee, the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, for the purpose of filling the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

(8.) The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body.

(9.) If there be no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Board of Trade on the application of the liquidator.

¹ Sect. 6 hereof, *ante* p. 168, and 23 (2), *post* p. 181, and Rules 141 to 143, *post* Appendix.

10.—(1.) Where in the course of the winding up of a company under the Companies Acts it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, liquidator, or other officer of the company, has misapplied or retained or become liable or accountable for any monies or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the official receiver, or of the liquidator of the company, or of any creditor or contributory of the company, examine into the conduct of such promoter, director, manager, liquidator, or other officer of the company, and compel him to repay¹ any moneys or restore any property so misapplied or retained, or for which he has become liable or accountable, together with interest after such rate as the court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust as the court thinks just.

Power of court to assess damages against delinquent directors, officers, and promoters.

(2.) The provisions of this section shall apply in the winding up of any company under the Companies Acts whether the same is being wound up by or subject to the supervision of the court or is being wound up voluntarily, and whether the winding up commenced before or after the passing of this Act, and notwithstanding that the offence is one for which the offender may be criminally² responsible.

¹ The Companies (Winding-up) Act, 1893, *post* p. 218.

² See Companies Act, 1862, Sect. 166, *ante* p. 68 and statutes there noted.

* See Rule 71, *post* Appendix.

Payment of money into Bank of England.

11.—(1.) An account, called the Companies Liquidation Account,¹ shall be kept by the Board of Trade with the Bank of England, and all monies received

by the Board of Trade in respect of proceedings under this Act shall be paid to that account.

(2.) Every liquidator of a company which is being wound up by order of the court shall, in such manner and at such times as the Board of Trade, with the concurrence of the Treasury, direct, pay the money received by him to the Companies Liquidation Account at the Bank of England, and the Board of Trade shall furnish him with a certificate of receipt of the money so paid.

(3.) Provided that, if the committee of inspection satisfy the Board of Trade that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any other Bank,² the Board of Trade shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such other Bank as the committee may select, and thereupon those payments shall be made in the prescribed manner.

(4.) If any such liquidator at any time retains for more than ten days a sum exceeding fifty pounds, or such other amount as the Board of Trade in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Board of Trade, he shall pay interest on the amount so retained in excess at the rate of twenty pounds per centum per annum, and shall be liable to disallowance of all or such part of his remuneration as to the Board shall seem just, and to be removed from his office by the Board, and shall be liable to pay any expenses occasioned by reason of his default.

(5.) All payments out of money standing to the credit of the Board of Trade in the Companies Liquidation Account shall be made by the Bank of England in the prescribed manner.³

(6.) No liquidator of a company which is being wound up by order of the court shall pay any sums received by him as liquidator into his private banking account.

¹ Rule 174, *post* Appendix.

² Rule 148, *post* Appendix.

³ Rule 147, *post* Appendix.

12.—(1.) The liquidator of a company which is being wound up by the court may, with the sanction either of the court or of the committee of inspection,¹ carry on the business of the company, or bring or defend any legal proceeding in the name and on behalf of the company, or exercise any of the powers conferred by section one hundred and fifty-nine² or section one hundred and sixty³ of the Companies Act, 1862.

Powers of liquidator.

(2.) The liquidator of any such company may, without the sanction of the court or of the committee of inspection, exercise any of the other powers conferred on the liquidator by section ninety-five⁴ of the Companies Act, 1862.

25 & 26 Vict. c. 89.

(3.) The exercise by the liquidator of the powers referred to in this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

(4.) The liquidator of a company which is being wound up by order of the court may, with the sanction either of the court or of the committee of inspection, employ a solicitor⁵ or other agent to take any proceedings or do any business which the liquidator is unable to take or do himself. The sanction aforesaid must be a sanction obtained before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction.

¹ Rule 154, *post* Appendix. ² *Ante* p. 64. ³ *Ante* p. 65.

⁴ *Ante* p. 40. ⁵ Rule 136, *post* Appendix.

13. General¹ rules may be made for requiring or enabling all or any of the powers and duties conferred and imposed on the court by sections ninety-one, ninety-eight,¹ ninety-nine,¹ one hundred,¹ one hundred and two,¹ and one hundred and seven of the Companies Act, 1862, to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court.

Delegation to liquidator of certain powers of court.

Provided that the liquidator shall not, without the special leave of the court,² rectify the register of members,

and shall not make any call³ without either the special leave of the court or the sanction of the committee of inspection.

¹ Rules 50 to 51 and 121 to 131 (as to Sect. 91); Rules 78 and 80 to 85 (as to Sects. 98 and 99); Rule 79 (as to Sect. 100); Rules 86 to 90 (as to Sect. 102); Rule 104 (as to Sect. 107), *post* Appendix.

² Companies Act, 1862, Sect. 98, *ante* p. 42.

³ Companies Act, 1862, Sect. 102, *ante* p. 43, and Rules 86 to 90 *post* Appendix.

power for
official
receiver to
apply as to
voluntary
winding up.

14. Where a company is being wound up voluntarily or subject to the supervision of the court, the official receiver attached to the court having jurisdiction to wind up the company may present a petition that the company be wound up by the court, and thereupon, if the court is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interest of the creditors or contributories, it may make an order that the company be wound up by the court.

information
to be pend-
ing liqui-
dations.

15.—(1.) If the winding up of a company is¹ not concluded within one year after its commencement, the liquidator of the company shall, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar of joint stock companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation. Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof, or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court, and shall be punishable accordingly on the application of the liquidator or of the official receiver.

(2.) If a liquidator makes default in complying with the requirements of this section he shall be liable to a fine not exceeding fifty pounds for each day during which the default continues.

(3.) If it appears from any such statement or otherwise that any liquidator of a company has in his hands or under his control any money representing² unclaimed

or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt, the liquidator shall forthwith pay the same to the Companies Liquidation Account at the Bank of England. Every such liquidator shall be entitled to the prescribed certificate of receipt for the moneys so paid, and that certificate shall be an effectual discharge to him in respect thereof.

(4.) For the purpose of ascertaining and getting in any money payable into the Bank of England in pursuance of this section, the like powers may be exercised and by the like authority as are exerciseable under section one hundred and sixty-two of the Bankruptcy Act, 1883, for the purpose of ascertaining and getting in the sums, funds, and dividends referred to in that section.

(5.) Any person claiming to be entitled to any money paid into the Bank of England in pursuance of this section may apply to the Board of Trade for payment of the same, and the Board of Trade may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due. Any person dissatisfied with the decision of the Board of Trade in respect of any claim made in pursuance of this section may appeal to the High Court.

(6.) This section shall apply whether the winding up of the company has commenced before or after the commencement of this Act.

¹ Rules 171 to 179, *post* Appendix. ² Rule 174, *post* Appendix.

16.—(1.) Whenever the cash balance standing to the credit of the Companies Liquidation Account is in excess of the amount which in the opinion of the Board of Trade is required for the time being to answer demands in respect of companies' estates, the Board of Trade shall notify the same to the Treasury, and shall pay over the same or any part thereof, as the Treasury may require, to the Treasury, to such account as the Treasury may direct, and the Treasury may invest the said sums, or any part thereof, in Government securities, to be placed to the credit of the said account.

Investment
surplus
funds on
general
account.

(2.) Whenever any part of the money so invested is,

in the opinion of the Board of Trade, required to answer any demands in respect of companies' estates, the Board of Trade shall notify to the Treasury the amount so required, and the Treasury shall thereupon repay to the Board of Trade such sum as may be required to the credit of the Companies Liquidation Account, and for that purpose may direct the sale of such part of the said securities as may be necessary.

(3.) The dividends on the investments under this section shall be paid to such account as the Treasury may direct, and regard shall be had to the amount thus derived in fixing the fees payable in respect of proceedings in the winding up of companies.

Separate
accounts of
particular
estates.

17.—(1.) An account shall be kept by the Board of Trade of the receipts and payments in the winding up of each company, and when the cash balance standing to the credit of the account of any company is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands in respect of that company's estate, the Board of Trade shall, on the request of the committee,¹ invest the amount not so required in Government securities, to be placed to the credit of the said account for the benefit of the said company.

(2.) Whenever any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company of the assets of which the money so invested formed part, the Board of Trade shall, on the request of the committee, raise such sum as may be required by the sale of such part of the said securities as may be necessary.

(3.) The dividends on the investments made under this section shall be paid to the credit of the company of the assets of which the money so invested formed part.

Interests
on balances
above two
thousand
pounds.

¹ Rule 151, *post* Appendix.

18. When the balance at the credit of any company's account in the hands of the Board of Trade exceeds two thousand pounds, and the liquidator gives notice to the Board of Trade that the excess is not required

for the purposes of the liquidation, then such company shall be entitled to interest upon such excess at the rate of two per centum per annum.

19. The Treasury may from time to time issue to the Board of Trade in aid of the votes of Parliament, out of the receipts arising from fees, fee stamps, and dividends on investments by the Treasury under this Act, any sums which may be necessary to meet the charges estimated by the Board of Trade in respect of salaries and expenses under this Act.

Certain receipts and fees to be applied in aid of expenditure.

20.—(1.) Every liquidator of a company which is being wound up by order of the court shall, at such times as may be prescribed, but not less than twice in each year during his tenure of office, send to the Board of Trade, or as they direct, an account¹ of his receipts and payments as such liquidator.

Audit of liquidator's accounts.

(2.) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

(3.) The Board of Trade shall cause the accounts so sent to be audited, and for the purpose of the audit the liquidator shall furnish the Board with such vouchers and information as the Board may require, and the Board may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4.) When any such account has been audited, one copy thereof shall be filed² and kept by the Board, and the other copy shall be filed with the court, and each copy shall be open to the inspection of any creditor, or of any person interested.

(5.) The Board of Trade shall cause the account or a summary thereof when audited to be printed, and shall send a printed copy thereof by post to every creditor and contributory.

¹ Rule 156, *post* Appendix.

² Rule 155, *post* Appendix.

Books to be kept by liquidator.

21. Every liquidator of a company which is being wound up by order of the court shall keep, in manner prescribed, proper books¹ in which he shall from time to time cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory of the company

may, subject to the control of the court, personally or by his agent inspect any such books.

¹ Rules 149 and 150, *post* Appendix.

Release of liquidators.

22.—(1.) When the liquidator of a company which is being wound up by order of the court has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories between themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Board of Trade shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Board, shall take into consideration the report, and any objection which may be urged by any creditor, or contributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the High Court.

(2.) Where the release of a liquidator is withheld the court may, on the application of any creditor, or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default he may have done or made contrary to his duty.

(3.) An order of the Board releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4.) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

* Rule 180, *post* Appendix.

Discretionary powers of liquidator and control thereof.

23.—(1.) Subject to the provisions of the Companies Acts, the liquidator of a company which is being wound up by order of the court shall, in the administration of the property of the company and in the distribution thereof amongst its creditors, have regard to any direc-

tions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions so given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2.) The liquidator may from time to time summon general meetings¹ of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be.

(3.) The liquidator may apply to the court in manner prescribed for directions in relation to any particular matter arising under the winding up.

(4.) Subject to the provisions of the Companies Acts, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

¹ Rules 121 to 131, *post* Appendix.

24. If any person is aggrieved by any act or decision of the liquidator of a company which is being wound up by order of the court, he may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

Appeal
to court
against
liquidator.

25.—(1.) The Board of Trade shall take cognizance of the conduct of liquidators of companies which are being wound up by order of the court, and in the event of any such liquidator not faithfully performing his duties and duly observing all the requirements imposed on him by statute, rules, or otherwise, with respect to the performance of his duties, or in the event of any complaint being made to the Board by any creditor or contributory in regard thereto, the Board shall inquire into the matter, and take such action thereon as may be deemed expedient.

Control of
Board of
Trade over
liquidators.

(2.) The Board may at any time require any liqui-

dator of a company which is being wound up by order of the court to answer any inquiry made by them in relation to any winding up in which the liquidator is engaged, and may, if the Board think fit,¹ apply to the court to examine on oath the liquidator or any other person concerning the winding up.

(3.) The Board may also direct a local investigation to be made of the books and vouchers of the liquidator of any company which is being wound up by order of the court.

¹ Rule 190, *post* Appendix.

General
rules and
fees.

26.—(1.) The Lord Chancellor may, with the concurrence of the President of the Board of Trade, make general¹ rules for carrying into effect the objects of this Act.

(2.) All general rules made under the foregoing provisions of this section shall be laid before Parliament within three weeks after they are made, if Parliament is then sitting, and if Parliament is not sitting, within three weeks after the beginning of the next session of Parliament, and shall be judiciously noticed, and shall have effect as if enacted by this Act.

(3.) Any general rule made under this section shall not come into operation until the expiration of one month after the rule has been made and issued.

(4.) There shall be paid in respect of the proceedings under this Act such fees² as the Lord Chancellor may, with the sanction of the Treasury, direct, and the Treasury may direct by whom and in what manner the same are to be collected and accounted for, and to what account they are to be paid.

(5.) All rules made and directions given by the Lord Chancellor under the foregoing provisions of this section shall be adopted by the authority for the time being empowered to make rules for regulating the practice or procedure in the chancery court of the County Palatine of Lancaster, but as so adopted shall have effect with the substitution of the words "vice-chancellor" for the word "judge," and the word "registrar" for the words "chief clerk," and of the words "chambers of the registrar" for the words

“chambers of the judge” and “judge’s chambers,” and any directions as to the remuneration to be allowed to officers of that court in respect of proceedings under this Act shall be subject to the sanction of the Chancellor of the Duchy and County Palatine of Lancaster.

¹ *Post* Appendix.

² *See* order as to fees dated 2nd December, 1903, as amended by order dated 8th November, 1904, *post* Appendix.

27.—(1.) The Board of Trade may, with the approval of the Treasury, appoint such additional officers as may be required by the Board for the execution of this Act, and may dismiss any person so appointed.

Officers and remuneration.

(2.) The Board of Trade, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any officer of, or person attached to, the Board of Trade, performing any duties under this Act, and may vary, increase, or diminish such remuneration as they may think fit.

(3.) The Lord Chancellor, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any person (other than an officer of the Board of Trade) performing any duties under this Act, and may vary, increase, or diminish such remuneration as they may think fit.

¹ By order of 31st October, 1904, a new department of the Board of Trade called “The Companies Department” was formed with a Comptroller, to whom all Official Receivers are to report, etc.

28.—(1.) The Treasury shall annually cause to be prepared and laid before both Houses of Parliament an account for the year ending with the thirty-first day of March, showing the receipts and expenditure during that year in respect of proceedings under this Act, whether commenced under this or any previous Act, and the provisions of section twenty-eight of the Supreme Court of Judicature Act, 1875, shall apply to the account as if the account had been required by that section.

Annual accounts of receipts and expenditure in respect of winding up proceedings. 88 & 89 Vict. c. 77.

(2.) The accounts of the Board of Trade under this Act shall be audited in such manner as the Treasury direct, and, for the purpose of the account to be laid before Parliament, the Board of Trade shall make such returns and give such information as the Treasury direct.

29.—(1.) The officers of the courts acting in the winding up of companies shall make to the Board of Trade such returns of the business of their respective

Returns by officers.

198 THE COMPANIES (WINDING-UP) ACT, 1890.

courts and offices, at such times and in such manner and form as may be prescribed, and from such returns the Board of Trade shall cause books to be prepared which shall, under the regulations of the Board, be open for public information and searches.

(2) [The Board of Trade shall also cause a general annual report of all matters, judicial and financial, within this Act to be prepared and laid before both Houses of Parliament.]

* Repealed by the Companies Act, 1907, Sect. 51 and 4th Schedule, *post* p. 291, Sect. 47 thereof being substituted for it.

Proceedings
of Board of
Trade.

30.—(1.) All documents purporting to be orders or certificates made or issued by the Board of Trade and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board, shall be received in evidence and deemed to be such orders or certificates without further proof unless the contrary is shown.

(2.) A certificate signed by the President of the Board of Trade that any order made, certificate issued, or act done, is the order, certificate, or act of the Board of Trade, shall be conclusive evidence of the fact so certified.

Application
of Act.

31.—(1.) This Act shall not, except where it is expressed to have a more extended application, apply to any company which is being wound up in pursuance of an order made before the commencement of this Act.

(2.) For the purposes of this Act a company shall not be deemed to be wound up by order of the court if the order is to continue a winding up under the supervision of the court.

(3.) This Act shall not apply to any company unless the registered office of the company is situate in England or Wales.

Interpre-
tation of
terms.

32.—(1.) In this Act, unless the context otherwise requires,—

“The Companies Acts” means the Companies Act, 1862, and the Acts amending the same.

“General rules” means general rules made under this Act, and includes forms.

“Prescribed” means prescribed by general rules.

“Stannaries Court” means the court of the Vice-Warden of the Stannaries.

(2.) In Part IV. of the Companies Act, 1862, and in ^{25 & 26 Vict. c. 89.} this Act the expression “the court,” when used in relation to a company shall, unless the contrary intention appears, mean the court having jurisdiction under this Act to wind up the company.

(3.) For the purposes of this Act the expression “registered office of a company” shall mean the place which has been the registered office of the company for the greater part of the six months immediately preceding the presentation of the petition for winding up the company, and shall include, in the case of an unregistered company, any place which in pursuance of section one hundred and ninety-nine of the Companies Act, 1862,¹ is to be deemed the registered office of the company for the purpose of the winding up thereof.

¹ *Ante* p. 85.

33. The enactments mentioned in the Second Schedule to this Act are hereby repealed, as to England and Wales, to the extent appearing in the third column of that schedule. Repeal.

34. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-one. Commencement of Act.

35.—(1.) This Act may be cited as the Companies Short title.
(Winding-up) Act, 1890.

(2.) This Act and the Companies Acts, 1862 to 1886, may be cited together as the Companies Acts, 1862 to 1890.

SCHEDULES.

Section 6.

FIRST SCHEDULE.

MEETINGS OF CREDITORS AND CONTRIBUTORIES.*

(1.) The meetings of creditors and contributories shall be held within twenty-one days after the date of the winding-up order, or within such further time as the court may approve, unless a special manager has been appointed, in which case such meeting shall be held within one month from the date of such order, or within such further time as aforesaid.

(2.) The official receiver of the company shall summon the meeting by giving not less than seven days' notice of the time and place thereof in the London Gazette and in a local paper. Notice of such meeting shall also be sent by post to every person appearing by the company's books to be a creditor of the company and to every member of the company.

(3.) The official receiver shall also, as soon as practicable, send to each creditor mentioned in the company's statement of affairs, and to each person appearing from the company's books, or otherwise, to be a contributory of the company, a summary of the company's statement of affairs, including the causes of its failure, and any observations thereon which the official receiver may think fit to make; but the proceedings at any such meeting shall not be invalidated by reason of any summary or notice required by these rules not having been sent or received before the meeting.

(4.) The meeting shall be held at such place as is in the opinion of the official receiver most convenient for the majority of the creditors and contributories.

(5.) The official receiver, or some person nominated by him, shall be the chairman at the meetings.

(6.) A person shall not be entitled to vote as a creditor unless he has duly proved a debt to be due to him from the company, and the proof has been duly lodged before the time appointed for the meeting.

(7.) A creditor shall not vote in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

(8.) For the purpose of voting, a secured creditor shall, unless

* See also Winding up, Rules 50 to 52, *post* Appendix.

THE COMPANIES (WINDING-UP) ACT, 1890. 201

he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security, unless the court on application is satisfied that the omission to value the security has arisen from inadvertence.

(9.) A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the company, and against whom a receiving order in bankruptcy has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

(10.) It shall be competent to the official receiver, or to the liquidator, within twenty-eight days after a proof estimating the value of a security as aforesaid had been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated, with an addition thereto of twenty per centum. Provided, that where a creditor has put a value on such security, he may, at any time before he has been required to give up such security as aforesaid, correct such valuation by a new proof, and deduct such new value from his debt, but in that case such addition of twenty per centum shall not be made if the liquidator requires the security to be given up.

(11.) The chairman of the meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the court. If he is in doubt whether the proof of a creditor should be admitted or rejected he shall mark the proof as objected to, and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

(12.) A creditor or a contributory may vote either in person or by proxy.

(13.) Every instrument of proxy shall be in the prescribed form, and shall be issued by an official receiver, or by the liquidator of the company, and every written part thereof shall be in the handwriting of the person giving the proxy, or of any manager or clerk or other person in his regular employment, or of a commissioner to administer oaths in the Supreme Court of Judicature in England.

(14.) General and special forms of proxy shall be sent to the creditors and contributories with the notice summoning the meeting, and neither the name nor description of the official receiver or of any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.

202 THE COMPANIES (WINDING-UP) ACT, 1890.

(15.) A creditor or a contributory may give a general proxy to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor or contributory.

(16.) A creditor or a contributory may give a special proxy to any person to vote at any specified meeting, or adjournment thereof—

- (a) for or against the appointment or continuance in office of any specified person as liquidator or member of the committee of inspection, and
- (b) on all questions relating to any matter other than those above referred to and arising at any specified meeting or adjournment thereof.

(17.) A proxy shall not be used unless it is deposited with the official receiver before the meeting at which it is to be used.

(18.) Where it appears to the satisfaction of the court that any solicitation has been used by or on behalf of a liquidator in obtaining proxies or in procuring the appointment of liquidator, except by the direction of a meeting of creditors or contributories, the court shall have power, if it think fit, to order that no remuneration shall be allowed to the person by whom or on whose behalf such solicitation may have been exercised, notwithstanding any resolution of the committee of inspection or of the creditors or contributories to the contrary.

(19.) A creditor or a contributory may appoint the official receiver to act in manner prescribed as his general or special proxy.

(20.) The chairman of the meeting may, with the consent of the meeting, adjourn the meeting from time to time and from place to place.

(21.) A meeting shall not be competent to act for any purpose except the election of a chairman, the proving of debts, and the adjournment of the meeting, unless there are present or represented thereat, at least three creditors or contributories, or all the creditors or contributories if their number does not exceed three.

(22.) If within half an hour from the time appointed for the meeting a quorum of creditors or contributories is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than seven or more than twenty-one days.

(23.) The chairman of the meeting shall cause minutes of the proceedings at the meeting to be drawn up, and fairly entered in a book kept for that purpose, and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

(24.) No person acting either under a general or a special proxy shall vote in favour of any resolution which would directly

THE COMPANIES (WINDING-UP) ACT, 1890. 203

or indirectly place himself, his partner or employer, in a position to receive any remuneration out of the estate of the company otherwise than as a creditor rateably with the other creditors of the company: Provided that where any person holds special proxies to vote for an application to the court in favour of the appointment of himself as liquidator he may use the said proxies and vote accordingly.

SECOND SCHEDULE.

Section 21.

ENACTMENTS REPEALED AS TO ENGLAND AND WALES.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
25 & 26 Vict. c. 89. - -	The Companies Act, 1862	Section eighty-one. In section ninety-two the words "The court shall determine whether any and what security is to be given by any official liquidator on his appointment." Section ninety-seven. Section one hundred and sixty-five.
30 & 31 Vict. c. 131. -	The Companies Act, 1867	Sections forty-one to forty-six.

THE DIRECTORS LIABILITY ACT, 1890.

(53 & 54 VICTORIA, CHAPTER 64.)

Short title. 1. This Act may be cited as the Directors Liability Act, 1890.

Construction. 2. This Act shall be construed as one with the Companies Acts, 1862 to 1890.

Liability for statements in prospectus. 3.—(1.) Where after the passing of this Act a prospectus or notice invites persons to subscribe for shares in or debentures or debenture stock of a company, every person who is a director of the company at the time of the issue of the prospectus or notice, and every person who having authorised such naming of him is named in the prospectus or notice as a director of the company or as having agreed to become a director of the company either immediately or after an interval of time, and every promoter¹ of the company, and every person who has authorised the issue of the prospectus or notice, shall be liable² to pay compensation to all persons who shall subscribe for any shares, debentures, or debenture stock on the faith of such prospectus or notice for the loss or damage they may have sustained by reason of any untrue statement in the prospectus or notice, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

(a) With respect to every such untrue statement not purporting to be made on the authority of an expert, or of a public official document or

statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares, debentures, or debenture stock, as the case may be, believe, that the statement was true ; and

- (b) With respect to every such untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an engineer, valuer, accountant, or other expert, that it fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of or extract from the report or valuation. Provided always, that notwithstanding that such untrue statement fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of an extract from the report or valuation, such director, person named, promoter, or other person, who authorised the issue of the prospectus or notice as aforesaid, shall be liable to pay compensation as aforesaid if it be proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it ; and
- (c) With respect to every such untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of such statement or copy of or extract from such document,

or unless it is proved that having consented to become a director of the company he withdrew his consent before the issue of the prospectus or notice, and that the prospectus or notice was issued without his authority or consent, or that the prospectus or notice was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reason-

able public notice that it was so issued without his knowledge or consent, or that after the issue of such prospectus or notice and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and caused reasonable public notice of such withdrawal, and of the reason therefor, to be given.

(2.) A promoter in this section means a promoter who was a party to the preparation of the prospectus or notice, or of the portion thereof containing such untrue statement, but shall not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company.

(3.) Where any company existing at the passing of this Act, which has issued shares or debentures, shall be desirous of obtaining further capital by subscriptions for shares or debentures, and for that purpose shall issue a prospectus or notice, no director of such company shall be liable in respect of any statement therein, unless he shall have authorised the issue of such prospectus or notice, or have adopted or ratified the same.

(4.) In this section the word "expert" includes any person whose profession gives authority to a statement made by him.

¹ Defined in Sub-sect. 2, *infra*.

² See Companies Act, 1900, Sect. 10 (7, 8), *post* p. 226, and Companies Act, 1907, Sect. 32, *post* p. 278, as to obtaining relief from the Court.

indemnity
where name
person
has been
properly
inserted as
director.

4. Where any such prospectus or notice as aforesaid contains the name of a person as a director of the company, or as having agreed to become a director thereof, and such person has not consented to become a director, or has withdrawn his consent before the issue of such prospectus or notice, and has not authorised or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus or notice was issued, and any other person who authorised the issue of such prospectus or notice shall be liable to indemnify the person named as a director of the company, as having agreed to become a director thereof as aforesaid, against all damages, costs, charges, and expenses to which he

may be made liable by reason of his name having been inserted in the prospectus or notice, or in defending himself against any action or legal proceedings brought against him in respect thereof.

5. Every person who by reason of his being a director, or named as a director or as having agreed to become a director, or of his having authorised the issue of the prospectus or notice, has become liable to make any payment under the provisions of this Act, shall be entitled to recover contribution,¹ as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment.

¹ But a person guilty of fraudulent misrepresentation is not to recover contribution from an innocent person, Companies Act. 1907, Sect. 32, *post* p. 278.

THE FORGED TRANSFERS ACT, 1891.

(54 & 55 VICTORIA, CHAPTER 43.)

Power to
make com-
pensation
for losses
from forged
transfer.

1.¹—(1.) Where a company or local authority issue or have issued shares, stock, or securities transferable by an instrument in writing or by an entry in any books or register kept by or on behalf of the company or local authority, they shall have power to make compensation by a cash payment out of their funds for any loss arising from a transfer of any such shares, stock, or securities, in pursuance of a forged transfer or of a transfer under a forged power of attorney.

(2.) Any company or local authority may, if they think fit, provide, either by fees not exceeding the rate of one shilling on every one hundred pounds transferred,² to be paid by the transferee upon the entry of the transfer in the books of the company or local authority, or by insurance, reservation of capital, accumulation of income, or in any other manner which they may resolve upon, a fund to meet claims for such compensation.

(3.) For the purpose of providing such compensation any company may borrow on the security of their property, and any local authority may borrow with the like consent and on the like security and subject to the like conditions as to repayment by means of instalments or the provision of a sinking fund and otherwise as in the case of the securities in respect of which compensation is to be provided, but any money so borrowed by a local authority shall be repaid within a term not longer than five years. Any expenses incurred by a local authority in making compensation, or in the

repayment of, or the payment of interest on, or otherwise in connexion with, any loan raised as aforesaid, shall, except so far as they may be met by such fees as aforesaid, be paid out of the fund or rate on which the security in respect of which compensation is to be made is charged.

(4.) Any such company or local authority may impose such reasonable restrictions on the transfer of their shares, stock, or securities, or with respect to powers of attorney for the transfer thereof, as they may consider requisite for guarding against losses arising from forgery.

(5.) Where a company or local authority compensate a person under this Act for any loss arising from forgery, the company or local authority shall, without prejudice to any other rights or remedies, have the same rights and remedies against the person liable for the loss as the person compensated would have had.

¹The Forged Transfers Act, 1892, Sect. 2, *post* p. 211, which explains this sub-section.

²The Forged Transfers Act, 1892, Sect. 3, *post* p. 211.

2. For the purposes of this Act—

Definitions.

The expression "company" shall mean any company incorporated by or in pursuance of any Act of Parliament, or by royal charter. "Company"

The expression "local authority" shall mean the council of any county or municipal borough, and any authority having power to levy or require the levy of a rate the proceeds of which are applicable to public local purposes. "Local authority."

3. This Act shall apply to any industrial, provident, friendly benefit, building, or loan society incorporated by or in pursuance of any Act of Parliament as if the society were a company. Application to industrial societies, etc.

4.—(1.) This Act shall apply to any harbour authority or conservancy authority as if the authority were a company. Application to harbour and conservancy authorities.

(2.) For the purposes of this Act the expression "harbour authority" includes all persons, being pro-

prietors of, or entrusted with the duty or invested with the power of constructing, improving, managing, regulating, maintaining, or lighting any harbour otherwise than for profit, and not being a joint stock company.

(3.) For the purposes of this Act the expression "conservancy authority" includes all persons entrusted with the duty or invested with the power of conserving, maintaining, or improving the navigation of any tidal water otherwise than for profit, and not being a joint stock company.

Application
to colonial
stock.
40 & 41 Vict.
c. 59.

5. In the case of any colonial stock to which the Colonial Stock Act, 1877, applies, the Government of the colony of which the stock forms the whole or part of the public debt may, if they think fit, by declaration under their seal or under the signature of a person authorised by them in that behalf, and in either case deposited with the Commissioners of Inland Revenue, adopt this Act, and thereupon this Act shall apply to the colonial stock as if the registrar of the Government were a company and the stock were issued by him.

Short title.

6. This Act may be cited as the Forged Transfers Act, 1891.

THE FORGED TRANSFERS ACT, 1892.

(55 & 56 VICTORIA, CHAPTER 36.)

1. This Act may be cited as the Forged Transfers Act, 1892, and this Act and the Forged Transfers Act, 1891, may be cited together as the Forged Transfers Acts, 1891 and 1892. Short title.
54 & 55 Vict.
c. 43.

2. Whereas by sub-section one¹ of section one of the Forged Transfers Act, 1891, it is provided that such company or local authority as therein mentioned "shall have power to make compensation by a cash payment out of their funds for any loss arising from the transfer of any such shares, stock, or securities in pursuance of a forged transfer, or of a transfer under a forged power of attorney," and it is expedient to remove doubts as to the application of the Act to losses and forgeries before the passing of the Act: Be it therefore enacted as follows:— Removal of
doubt as to
the opera-
tion of
54 & 55 Vict.
c. 43.

The Forged Transfers Act, 1891, shall have effect as if at the end of sub-section one of section one of that Act there were added the words "whether such loss arises, and whether the transfer or power of attorney was forged before or after the passing of this Act, and whether the person receiving such compensation, or any person through whom he claims, has or has not paid any fee or otherwise contributed to any fund out of which the compensation is paid."

¹ *Ante* p. 208.

3. Sub-section two¹ of section one of the said Act shall be read as if, after the words "on any one hundred" Amend-
ment of
54 & 55 Vict.
c. 43. s. 1 (2).

pounds transferred," were inserted the words "with a minimum charge equal to that for twenty-five pounds."

¹ *Ante* p. 208.

Provision
where one
company
takes over
shares, etc.,
of another
company.

4. Where the shares, stock, or securities of a company or local authority have by amalgamation or otherwise become the shares, stock, or securities of another company or local authority, the last-mentioned company and authority shall have the same power under the Forged Transfers Act, 1891, and this Act, as the original company or authority would have had if it had continued.

THE COMPANIES (WINDING-UP) ACT, 1893.

(56 & 57 VICTORIA, CHAPTER 58.)

1. An order for payment of money made by the court under section ten¹ of the Companies (Winding-up) Act, 1890, shall be deemed to be a final judgment within the meaning of paragraph (g) of sub-section one of section four of the Bankruptcy Act, 1883. Effect of order under 58 & 54 Vict. c. 63. s. 10. 46 & 47 Vict. c. 52.

¹ *Ante* p. 187.

2. This Act may be cited as the Companies (Winding-up) Act, 1893. Short title.

THE COMPANIES ACT, 1898.

(61 & 62 VICTORIA, CHAPTER 26.)

Court
empowered
to grant
relief for
non-com-
pliance
with 30 & 31
Vict. c. 181.
s. 25. *

1.—(1.) Whenever, before or after the commencement of this Act, any shares in the capital of any company under the Companies Acts, 1862 and 1890, credited as fully or partly paid up shall have been or may be issued for a consideration other than cash,¹ and at or before the issue of such shares no contract or no sufficient contract is filed with the Registrar of Joint Stock Companies, in compliance with² section twenty-five of the Companies Act, 1867, the company or any person interested in such shares or any of them may apply to the court for relief, and the court, if satisfied that the omission to file a contract or sufficient contract was accidental or due to inadvertence, or that for any reason it is just and equitable to grant relief, may make an order for the filing with the registrar of a sufficient contract in writing, and directing that on such contract being filed within a specified period it shall, in relation to such shares, operate as if it had been duly filed with the registrar aforesaid before the issue of such shares.

25 & 26 Vict.
c. 89.

(2.) Any such application may be made in the manner in which an application to rectify the register of members may be made under section thirty-five³ of the Companies Act, 1862, and either before or after an order has been made or an effective resolution has been passed for the winding up of such company, and either before or after the commencement of any proceedings for enforcing the liability on such shares consequent on the omission aforesaid, and any such application

shall, if not made by the company, be served on the company.

(3.) Any such order may be made on such terms and conditions as the court may think fit, and the court may make such order as to costs as it deems proper, and may direct that an office copy of the order shall be filed with the registrar aforesaid, and the order shall in all respects have full effect.

(4.) Where the court in any such case is satisfied that the filing of the requisite contract would cause delay or inconvenience, or is impracticable, it may, in lieu thereof, direct the filing⁴ of a memorandum in writing, in a form approved by the court specifying, the consideration for which the shares were issued, and may direct that on such memorandum being filed within a specified period it shall in relation to such shares operate as if it were a sufficient contract in writing within the meaning of section twenty-five of the Companies Act, 1867,² and had been duly filed with the registrar aforesaid before the issue of such shares. The memorandum shall before the filing thereof be stamped with the same amount of *ad valorem* stamp duty as would be chargeable upon the requisite contract unless the contract has been produced to the registrar duly stamped, or unless the registrar is otherwise satisfied that the contract was duly stamped.

* Repealed by Companies Act, 1900, Sect. 33, *post* p. 239, and it would therefore seem that this Act has ceased to be operative, except perhaps as to shares issued before 1901.

¹ The Companies Act, 1900, Sect. 7 (1) (b), *post* p. 221.

² Repealed by the Companies Act, 1900, Sect. 33, *post* p. 239, and *see* Sect. 7 (1) (b) of that Act, *post* p. 221.

³ *Ante* p. 15.

⁴ *Cf.* Companies Act, 1907, Sect. 6 (1), *post* p. 256.

2. The jurisdiction by the Act given to the court is not by implication to curtail or derogate from its jurisdiction to grant relief in any such case under section thirty-five of the Companies Act, 1862,¹ or otherwise.²

¹ *Ante* p. 15.

² *E.g.*, Companies Act, 1907, Sect. 6 (4), *post* p. 257.

3. This Act may be cited as the Companies Act, 1898, and shall be read with the Companies Acts, 1862 to 1893,

Jurisdiction cumulative.

Short title and construction

THE COMPANIES ACT, 1900.

(63 & 64 VICTORIA, CHAPTER 48.)

Incorporation and Objects.

Conclusive-
ness of
certificate
of incor-
poration.

1.—(1.) A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requisitions of the Companies Acts in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under the Companies Acts.

(2.) A statutory declaration¹ by a solicitor of the High Court engaged in the formation of the company or by a person named in the articles of association as a director or secretary of the company of compliance with all or any of the said requisitions shall be produced to the registrar, and the registrar may accept this declaration as sufficient evidence of such compliance.

(3.) The incorporation of a company shall take effect from the date of incorporation mentioned in the certificate of incorporation.

(4.) This section applies to all certificates of incorporation, whether given before or after the passing of this Act.

¹ Board of Trade form (No. 41) and fees, *post* p. 241.

Restric-
tions on
appoint-
ment or
advertis-
ement of
director.

Appointment and Qualification of Director.

2.—(1.) A person shall not be capable of being appointed director of a company by the articles of association, and shall not be named as a director or

proposed director of a company in any *prospectus¹ issued by or on behalf of the company, unless, before the registration of the articles or the publication of the prospectus,¹ * as the case may be, he has by himself or by his agent authorised in writing—

- (i) signed and filed with the registrar a consent in writing² to act as such director; and
- (ii) either signed the memorandum of association for a number of shares not less than his qualification (if any), or signed and filed³ with the registrar a contract in writing to take from the company and pay for his qualification shares (if any).

(2.) On the application for registration of the memorandum and articles of association of a company, the applicant shall deliver to the registrar a list⁴ of the persons who have consented to be directors of the company, and if this list contains the name of any person who has not so consented the applicant shall be liable to a fine not exceeding fifty pounds.

(3.) Provided that this section shall not apply to a company registered before the commencement of this Act,⁵ [or to a company which does not issue any invitation to the public to subscribe for its shares,] or to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business.⁶

¹ Defined in Sect. 30, *post* p. 238; where no prospectus is issued by a public company (unless it has before 1st July, 1908, issued shares or debentures); for the words in the text between asterisks there must be substituted "verified statement in lieu of prospectus, unless before the registration of the articles or the filing of such statement," Companies Act, 1907, Sect. 1, *post* p. 251, and *see* also the further restrictions imposed by that section.

² Board of Trade form (No. 42) and fees, *post* p. 242.

³ Fee 5s., *London Gazette*, 1st January, 1901.

⁴ Board of Trade form (No. 43) and fees, *post* p. 242.

⁵ Words in brackets repealed by Companies Act, 1907, Sect. 51, and 4th Schedule, *post* p. 291.

⁶ Sect. 6, *post* p. 220.

Qualifica-
tion of
director.

3.—(1.) Without prejudice to the restrictions imposed by the last foregoing section, it shall be the duty of every director who is by the regulations of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment,

or such shorter time as may be fixed by the regulations of the company.

(2.) The office of director of a company shall be vacated, if the director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the regulations of the company, obtain his qualification, or if after the expiration of such period or shorter time he ceases at any time to hold his qualification: and a person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification.

(3.)¹ [If after the expiration of the said period or shorter time any unqualified person acts as director of a company, he shall be liable to pay to the company the sum of five pounds for every day during which he so acts.]

¹ Repealed by Companies Act, 1907, Sect. 34 whereof (*post* p. 278) is substituted.

Allotment.

restriction
to
allotment.

4.—(1.) No allotment shall be made of any share capital of a company offered to the public for subscription, unless the following conditions have been complied with, namely,—

(a) the amount (if any) fixed by the memorandum or articles of association and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment; or

(b) if no amount is so fixed and named, then the whole amount of the share capital so offered for subscription,

has been subscribed, and the sum payable on application for the amount so fixed and named, or for the whole amount offered for subscription, has been paid to and received by the company.

(2.) The amount so fixed and named and the whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash,¹ and is in this Act referred to as the minimum subscription.

(3.) The amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share.

(4.) If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to the applicants without interest, and, if any such money is not so repaid within forty-eight days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per centum per annum from the expiration of the forty-eight days: Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part.²

(5.) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6.) This section, except sub-section (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

* For restrictions where no prospectus is issued, *see* Companies Act, 1907, Sect. 1 (2), *post* p. 257.

¹ As to which, *see* Sect. 7 (1) (b), *post* p. 221.

² And see further as to power of court to grant relief to director guilty of negligence, Companies Act, 1907, Sect. 32, *post* p. 278.

5.—(1.) An allotment made by a company to an applicant in contravention of the foregoing provisions of this Act¹ shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company² and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

Effect of
irregular
allotment.

(2.) If any director of a company knowingly contravenes or permits or authorises the contravention of any of the foregoing¹ provisions of this Act with respect to allotment he shall be liable to compensate the company and the allottee respectively for any loss, damages, or costs which the company or the allottee may have sustained or incurred thereby: Provided that proceedings to recover such loss, damages, or costs

shall not be commenced after the expiration of two years from the date of the allotment.

¹ Preceding section, and where no prospectus is issued, *see* the Companies Act, 1907, Sect. 1 (4), *post* p. 252, which adds the provisions of that section to those set out in this section.

² Sect. 12, *post* p. 227.

Restrictions on commencement of business.

6.—(1.) A company shall not commence any business or exercise any borrowing powers unless—

- (a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription;¹ and
- (b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered² for public subscription; and
- (c) there has been filed with the registrar a statutory declaration by the secretary or one of the directors, in the prescribed form,³ that the aforesaid conditions have been complied with.⁴

(2.) The registrar shall, on the filing⁵ of this statutory declaration, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled.

(3.) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(4.)⁶[Nothing in this section shall prevent the simultaneous offer for subscription of any shares and debentures or the receipt of any application.]

(5.) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding fifty pounds for every day during which the contravention continues.

(6.) Nothing in this section shall apply to a company registered before the commencement of this Act.⁷

(7.) This section shall not apply to any company where there is no invitation to the public to subscribe for its shares.⁸

¹ Defined in Sect. 4 (2), *ante* p. 218. ² Or (where no prospectus is issued) shares payable in cash, Companies Act, 1907, Sect. 1 (2), *post* p. 251, and 2nd Schedule thereof, *post* p. 289.

³ Board of Trade form (No. 44) and fees, *post* p. 243. ⁴ Where no prospectus is issued, add "(d) There has been filed with the Registrar a statement in lieu of prospectus," Companies Act, 1907, Sect. 1 (2), *post* p. 251, and 2nd Schedule, *post* p. 289.

⁵ And (where no prospectus is issued) of a statement in lieu of prospectus, Companies Act, 1907, Sect. 1 (2), *post* p. 251, and 2nd Schedule, *post* p. 289. ⁶ Repealed by Companies Act, 1907, Sect. 4 (*post* p. 256) which is substituted.

⁷ 1st January, 1901, Sect. 85, *post* p. 239. ⁸ This Sub-sect. is not to apply to any company registered after 30th June, 1908, Companies Act, 1907, Sect. 1 (2), and 4th Schedule, *post* p. 291.

Return as to allotments.

7.—(1) Whenever a company limited by shares makes any allotment of its shares, the company shall within one month thereafter file with the registrar—

(a) a return¹ of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount (if any) paid or due and payable on each share; and

(b) in the case of shares allotted in whole or in part for a consideration other than cash, a contract in writing² constituting the title of the allottee to such allotment, together with any contract of sale, or for services or other consideration in respect of which such allotment was made, such contracts being duly stamped,³ and a return¹ stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2.) If default is made in complying with the requirements of this section, every director, manager, secretary, or other officer of the company, who is knowingly a party to the default, shall be liable⁴ to a fine⁵ not exceeding fifty pounds for every day during which the default continues.

¹ Board of Trade form (No. 45) and fees, *post* p. 244. ² Fee for filing 5s., *London Gazette*, 1st January, 1901. ³ See provisions for preventing evasion of this stamp duty contained in Sect. 6 of Companies Act, 1907, *post* p. 257. ⁴ But the Court may give relief in certain cases, Companies Act, 1907, Sect. 6 (4), *post* p. 257.

⁵ Recoverable summarily, Companies Act, 1907, Sect. 43, *post* p. 235.

Commis-
sions,
discounts,
etc.

8.—(1.) Upon any offer¹ of shares to the public for subscription, it shall be lawful for a company² to pay a commission³ to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission and the amount or rate per cent. of the commission paid or agreed to be paid are respectively authorised by the articles of association and disclosed in the prospectus,⁴ and the commission³ paid or agreed to be paid does not exceed the amount or rate so authorised.

(2.) Save as aforesaid no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount, or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3.) But nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.

¹ See Companies Act, 1907, Sect. 8 (1), *post* p. 258, for the application of this Section to cases where shares are not offered to public for subscription.

² And for a vendor to, or promoter of, a company, Companies Act, 1907, Sect. 8 (1), *post* p. 258.

³ The amount paid for commission must be stated in the summary under Sect. 26 of Companies Act, 1862 (*ante* p. 12), Companies Act, 1907, Sect. 7, *post* p. 257.

⁴ Defined in Sect. 30, *post* p. 238, and *see* next Section.

*Prospectus.*¹

Timing of
prospectus.

9.—(1.) Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus.

(2.) A copy of every such prospectus shall be signed by every person who is named therein as a director

or proposed director of the company, or by his agent authorised in writing, and shall be filed² with the registrar on or before the date of its publication.

(3.) The registrar shall not register any prospectus unless it is so dated and signed. No prospectus shall be issued until so filed for registration, and every prospectus shall state on the face of it that it has been so filed.

¹ Defined in Sect. 30, *post* p. 238.

² Fee 5s., *London Gazette*, 1st January, 1901; penalty for failure to file £5 per day, recoverable summarily, Companies Act, 1907, Sect. 3, *post* p. 255, and Sect. 49, *post* p. 285.

10.*—[(1.) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state—

Specific requirements as to particulars of prospectus.

- (a) the contents of the memorandum of association, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively; and the number of founders' or management shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company; and
- (b) the number of shares, if any, fixed by the articles of association as the qualification of a director, and any provision in the articles of association as to the remuneration of the directors; and
- (c) the names, descriptions, and addresses of the directors or proposed directors; and
- (d) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment, and the amount actually allotted; and the amount, if any, paid on such shares; and
- (e) the number and amount of shares and debentures issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the

* Repealed by Companies Act, 1907, Sect. 2 (1), which is substituted, *post* p. where the additional requirements made are set out in black type.

latter case the extent to which they are so paid up, and in either case the consideration for which such shares or debentures have been issued or are proposed or intended to be issued; and

- (f) the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of publication of the prospectus, and the amount payable in cash, shares, or debentures, to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor; and
- (g) the amount (if any) paid or payable as purchase money in cash, shares, or debentures, of any such property as aforesaid, specifying the amount payable for good-will; and
- (h) the amount (if any) paid or payable as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in the company, or the rate of any such commission; and
- (i) the amount or estimated amount of preliminary expenses; and
- (j) the amount paid or intended to be paid to any promoter and the consideration for any such payment; and
- (k) the dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into

more than three years before the date of publication of the prospectus; and

- (l) the names and addresses of the auditors (if any) of the company; and
- (m) full particulars of the nature and extent of the interest (if any) of every director in the promotion of or in the property proposed to be acquired by the company, with a statement of all sums paid or agreed to be paid to him in cash or shares by any person either to qualify him as a director or otherwise for services rendered by him in connection with the formation of the company.]

(2.) For the purposes of this section every person shall be deemed to be a vendor¹ who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

- (a) the purchase money is not fully paid at the date of publication of the prospectus; or
- (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or
- (c) the contract depends for its validity or fulfilment on the result of such issue.

(3.) Where any of the property to be acquired by the company is to be taken on lease, this section shall apply as if the expression “vendor” included the lessor, and the expression “purchase money” included the consideration for the lease, and the expression “sub-purchaser” included a sub-lessee.

(4.) This section shall not apply to a circular or notice inviting existing members or debenture holders of a company to subscribe for shares² or debentures of the company, whether with or without the right to renounce in favour of other persons, but, subject as aforesaid, this section shall apply to any prospectus whether issued on or with reference to the formation of a company or subsequently: Provided that—

- (a) The requirements as to the memorandum of as-

sociation, and the qualification, remuneration, and interest of directors, the names, descriptions, and addresses of directors or proposed directors, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus published more than one year after the date at which the company is entitled to commence business;³ and

*(b)[in the case of a prospectus published more than one year after the date at which the company is entitled to commence business, the obligation to disclose all material contracts shall be limited to a period of two years immediately preceding the publication of the prospectus]

(5.) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(6.) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary to specify the contents of the memorandum of association or the signatories thereto, and the number of shares subscribed for by them.

(7.)⁴ In the event of non-compliance with any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance, if he proves that—

(a) as regards any matter not disclosed, he was not cognisant thereof; or

(b) the non-compliance arose from an honest mistake of fact on his part.

Provided⁵ that in the event of non-compliance with the requirements contained in paragraph (m) of subsection (1) of this section no director or other person shall incur any liability in respect of such non-compliance unless it be proved that he had knowledge of the matters not disclosed.

(8.) Nothing in this section shall limit or diminish

any liability which any person may incur under the general law⁶ apart from this section.

* Repealed by Companies Act, 1907, Sect. 51, and 4th Schedule, *post* p. 291.

¹ Next Sub-section.

² This Section was altered to read as here set out by Companies Act, 1907, Sect. 2 (2), *post* p. 255.

³ Sect. 6, *ante* p. 220.

⁴ *See* as to obtaining relief from the Court in certain cases, Companies Act, 1907, Sect. 32, *post* p. 273.

⁵ Sub-section (1) being now repealed, this proviso is no longer of any value.

⁶ *See* the Directors Liability Act, 1890, *ante* p. 204.

11. A company shall not, prior to the statutory meeting¹ vary the terms of a contract referred to in the prospectus,² except subject to the approval of the statutory meeting.

Restriction on alteration of terms mentioned in prospectus.

¹ Next Section, Sub-sect. 2 (e).

² Or (where no prospectus is issued) the verified statement in lieu of prospectus, Companies Act, 1907, Sect. 1 (2), *post* p. 251, and 2nd Schedule, *post* p. 289.

Statutory Meeting.

12.*—(1.) Every company¹ limited by shares and registered after the commencement² of this Act shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business,³ hold a general meeting of the members of the company, which shall be called the statutory meeting.

First statutory meeting of company.

(2.) The directors shall, at least seven days before the day on which the meeting is held, forward to every member⁴ of the company a report⁵ certified by not less than two directors of the company, or, where there are less than two directors, by the sole director and manager, stating:—

(a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;

- (b) the total amount of cash received by the company in respect of such shares, distinguished as aforesaid;
- (c)[an abstract of the receipts and payments of the company on capital account to the date of the report, and an account or estimate of the preliminary expenses of the company;]
- (d) the names, addresses, and descriptions of the directors, auditors⁶ (if any), manager (if any), and secretary of the company; and
- (e) the particulars of any contract, the modification⁷ of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(3.) The report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors,⁶ if any, of the company.

(4.) The directors shall cause a copy of the report,⁵ certified as by this section required, to be filed with the registrar forthwith after the sending thereof to the members of the company.

(5.) The directors shall cause a list showing the names, descriptions, and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(6.) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles of association may be passed.

(7.) The meeting may adjourn from time to time, and at any such adjourned meeting any resolution of which notice has been given in accordance with the

articles of association, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(8.) If default is made in filing such report⁵ as aforesaid or in holding the statutory meeting, then, at the expiration of fourteen days after the last day on which the meeting ought to have been held, any shareholder may petition the Court for the winding up of the company,⁶ and upon the hearing of the petition the Court may either direct that the company be wound up, or give directions for the report being filed or a meeting being held, or make such other order as may be just, and may order that the costs of the petition be paid by any persons who in the opinion of the Court are responsible for the default.

* This Section replaces Sect. 39 of Companies Act, 1867, *ante* p. 18.

† Repealed by Companies Act, 1907, Sect. 51, and 4th Schedule (*post* p. 291), Sect. 22 thereof (*post* p. 272) being substituted.

¹ Except private companies, Companies Act, 1907, Sect. 22 (2), *post* p. 273.

² 1st January, 1901, *see* Sect. 35, *post* p. 239.

³ Sect. 6, *ante* p. 220.

⁴ Including debenture holders in a public company registered after 30th June, 1908, Companies Act, 1907, Sect. 23, *post* p. 273.

⁵ Board of Trade form (No. 46) and fees, *post* pp. 245, 246, and *see* also Companies Act, 1907, Sect. 22 (1), *post* p. 272, as to additional requirements.

⁶ Sect. 21 (4), *post* p. 235.

⁷ Sect. 11, *ante* p. 227.

⁸ The Companies Act, 1862, Sect. 82, *ante* p. 36.

13.—(1.) Notwithstanding anything in any regulations of a company, the directors of a company shall, on the requisition of the holders of not less than one-tenth of the issued capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to convene an extraordinary general meeting of the company.

(2.) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the office of the company, and may consist of several documents in like form each signed by one or more requisitionists.

(3.) If the directors of the company do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists, or a majority of them in value, may

Extra-ordinary general meeting.

themselves convene the meeting, but any meeting so convened shall not be held after three months from the date of such deposit.

(4.) If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith convene a further extraordinary general meeting for the purpose of considering the resolution and, if thought fit, of confirming it as a special resolution; and, if the directors do not convene the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves convene the meeting.

(5.) Any meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

Mortgages and Charges.

registra-
tion of mort-
gages and
charges.

* 14.—(1.) Every mortgage or charge created by a company after the commencement of this Act and being either—

- (a) a mortgage or charge for the purpose of securing any issue of debentures;¹ or
- (b) a mortgage or charge on uncalled capital of the company; or
- (c) a mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale; or
- (d) a floating charge on the undertaking or property of the company,

shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless filed with the registrar for registration in manner required by this Act² within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured.

(2.) Where the mortgage or charge comprises property outside the United Kingdom, it shall, so far as

that property is concerned, be sufficient compliance with the requirements of this section, if a deed purporting to specifically charge such property be registered notwithstanding that further proceedings may be necessary to make such mortgage or charge valid or effectual according to the law of the country in which such property is situate.

(3.) The registrar shall keep, with respect to each company, a register in the³prescribed form⁴of all such mortgages and charges created by the company after the commencement of this Act, and requiring registration under this section, and shall, on payment of the prescribed fee,⁵ enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.

(4.) Provided that where a series of debentures containing any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall be sufficient to enter on the register—

- (a) the total amount secured by the whole series; and
- (b) the dates of the resolutions creating the series and of the covering deed, if any, by which the security is created or defined; and
- (c) a general description of the property charged; and
- (d) the names of the trustees, if any, for the debenture holders.

(5.) Where more than one issue is made of debentures in the same series, the company may require the registrar to enter on the register the date and amount of any particular issue, but an omission to do this shall not effect the validity of the debentures issued.

(6.) The registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of this section, stating the amount thereby secured (which certificate shall be conclusive

evidence that the requirements of this section as to registration have been complied with), and the company shall cause a copy of the certificate so given to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered.

(7.) It shall be the duty of the company to register every mortgage or charge created by the company and requiring registration under this section, and for that purpose to supply the registrar with the particulars required for registration;³ but any such mortgage or charge may be registered on the application of any person interested therein.

(8.) The register kept, in pursuance of this section, of the mortgages and charges of each company shall be open to inspection by any person on payment of the prescribed fee,⁴ not exceeding one shilling for each inspection.

(9.) Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under this section, to be kept at the registered office of the company, and to be open to inspection by the members and creditors of the company on payment of such fee, not exceeding one shilling for each inspection, as may be fixed by the regulations of the company. Provided that in the case of a series of uniform debentures a copy of one such debenture shall be sufficient.

** Repealed by Companies Act, 1907, Sect. 51, and 4th Schedule (post p. 291) [Sect. 10 thereof (post p. 260) being substituted] as regards all charges created after 30th June, 1908, but this Section is still operative upon all charges created between 31st December, 1900, and 1st July, 1908. See the Interpretation Act, 1889, Sect. 38, set out in Appendix.*

¹ Including debenture stock, Sect. 30, post p. 239.

² Sub-Sect. 3 and following Sub-Sects. of this Section.

³ By Board of Trade, Sect. 30, post p. 238.

⁴ Board of Trade form (No. 47), post p. 247.

⁵ See for fees prescribed under this Sect., post p. 249.

15. A judge of the High Court, on being satisfied that the omission to register a mortgage or charge within the time required by this Act,¹ or the omission or misstatement of any particular with respect to any mortgage or charge, was accidental, or due to

inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief² may, on the application of the company or any person interested, and on such terms and conditions as seem to the judge just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or misstatement be rectified.

¹ Twenty-one days after creation of charge, Sect. 14 (1), *ante* p. 230.

² See further as to granting relief to directors in similar circumstances, Companies Act, 1907, Sect. 32, *post* p. 278.

16. The registrar may, on evidence being given to his satisfaction that the debt for which any registered mortgage or charge was given has been paid or satisfied, order that a memorandum of satisfaction¹ be entered on the register, and shall if required furnish the company with a copy² thereof.

Entry of satisfaction

¹ Board of Trade form (No. 49) and fees, *post* p. 249.

² On fee of 5s., *London Gazette*, 1st January, 1901.

17. The registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars, to the mortgages or charges registered under this Act.

Index to registers of mortgages and charges.

18. If any company makes default in complying with the requirements of this Act as to the registration of any mortgage or charge created by the company, the company and every director, manager, and other officer of the company, who knowingly and wilfully authorised or permitted such default shall, without prejudice to any other liability, be liable¹ on summary conviction to a fine not exceeding one hundred pounds; and if any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock required by this Act to be registered, without a copy of the certificate of the registrar being endorsed upon it,² he shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred pounds.

Penalties.

¹ See Companies Act, 1907, Sect. 32, *post* p. 278, as to obtaining relief from the Court for breach of personal duty in certain cases.

² As required by Sect. 14 (6), *ante* p. 231.

Annual Summary.

Annual
summary.
25 & 26 Vict.
c. 89.

19.—(1.) The summary mentioned in section twenty-six of the Companies Act, 1862,¹ shall be so framed as to distinguish between the shares issued for cash and the shares issued otherwise than for cash or only partly for cash, and shall, in addition to the particulars required by that section to be specified, also specify—

- (a) the total amount of debt due from the company in respect of all mortgages and charges which require registration under this Act, or which would require such registration if created after the commencement of this Act;² and
- (b) the names and addresses of the persons who are the directors of the company³ at the date of the summary.

(2.) The list and summary mentioned in the said section twenty-six must be signed by the manager or by the secretary of the company.

¹ *Ante* p. 12, enlarged by Sect. 21 of Companies Act, 1907, *post* p. 272, except as to private companies.

² Under Sect. 14, *ante* p. 230.

³ Board of Trade form (No. 6B), *post* p. 240.

Amend-
ment of 25 &
26 Vict. c.
89. ss. 45, 46.

20. Sections forty-five and forty-six of the Companies Act, 1862,¹ shall apply to companies having a capital divided into shares, and the words “and not having a capital divided into shares” in those sections shall be repealed.

¹ *Ante* p. 21.

*Audit.*¹

Appoint-
ment of
auditors.

21.—(1.) Every company shall at each annual general meeting² appoint an auditor or auditors to hold office until the next annual general meeting.

(2.) If an appointment of auditors is not made at an annual general meeting, the Board of Trade may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services.

(3.) A director or officer of the company shall not be capable of being appointed auditor of the company.

(4.) The first auditors of the company may be appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting, unless previously removed by a resolution of the shareholders in general meeting, in which case the shareholders at such meeting may appoint auditors.

(5.) The directors of a company may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act.

¹ See the Companies Act, 1907, Sect. 19 (4), *post* p. 271.

² See Companies Act, 1907, Sect. 24, *post* p. 273.

22. The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting,¹ or to fill any casual vacancy,² may be fixed by the directors.

Remuneration of auditors.

¹ Sect. 21 (4).

² Sect. 21 (5).

23.* Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors, and the auditors shall sign a certificate at the foot of the balance sheet stating whether or not all their requirements as auditors have been complied with, and shall make a report to the shareholders on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office; and in every such report shall state whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs as shown by the books of the company; and such report shall be read before the company in general meeting.

Rights and duties of auditors.

* Repealed by Companies Act, 1907, Sect. 19, *post* p. 270, which is substituted.

Winding up.

24. The provisions of section two¹ of the Joint Stock Companies Arrangement Act, 1870, shall apply not only as between the company and the creditors, or any class thereof, but as between the company and the members, or any class thereof.

Application
of 33 & 34
Vict. c. 104.
s. 2.

¹ *Ante* p. 159.

25. In a voluntary winding up an application under section one hundred and thirty-eight¹ of the Companies Act, 1862, may be made by any creditor² of the company.

Amendment
of 25 & 26
Vict. c. 89.
s. 138, as to
applica-
tions.

¹ *Ante* p. 58.

² Who may also apply to the Court as to the appointment of liquidators or committee of inspection under Companies Act 1907, Sect. 27 (2), *post* p. 275.

Defunct Companies.

26.—(1.) Where a company is being wound up and the registrar has reasonable cause to believe that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months after notice by the registrar demanding the returns has been sent by post to the registered address of the company, or to the liquidator at his last known place of business, the provisions of section seven¹ of the Companies Act, 1880, shall apply in like manner as if the registrar had not within one month after sending the second letter therein mentioned received any answer thereto.

Amendment
of law as to
striking
names of
defunct
companies
off register.

13 Vict. c. 19.

(2.) In sub-section five² of the said section seven, after the words "or member," in each place where they occur, shall be inserted the words "or creditor," and in the same sub-section, after the word "operation," the words "or otherwise" shall be substituted for the word "and".

¹ *Ante* p. 156.

² *Ante* p. 157.

Companies limited by Guarantee.¹

27.—(1.) A company limited by guarantee shall not be capable of having a capital divided into shares, unless the memorandum of association so provides, and specifies the amount of its capital (subject to increase or reduction in accordance with the Companies Acts) and the number of shares into which the capital is divided.

Provisions
as to com-
panies
limited by
guarantee.

(2.) Every provision in any memorandum or articles of association or resolution of a company (whether limited by guarantee or otherwise) purporting to divide the undertaking of the company into shares or interests shall for the purposes of this section be treated as a provision for a capital divided into shares, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

(3.) In the case of a company limited by guarantee and not having a capital divided into shares, every provision in the memorandum or articles of association or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(4.) This section shall apply only to companies registered after the commencement of this Act.

¹ The Companies Act, 1862, Sect. 9, *ante* p. 4; Sect. 14, p. 6; Sect. 90, p. 38; Sect. 134, p. 57, and Form C, p. 116 *et seq.*

False Statements.¹

28. If any person in any return, report, certificate, balance sheet, or other document, required by or for the purposes of this Act, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of a misdemeanor, and shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, with or without hard labour, and on summary conviction to imprisonment for a term not exceeding four months, with or without

Penalty for
false state-
ment.

hard labour, and in either case to a fine in lieu of or in addition to such imprisonment as aforesaid: Provided that the fine imposed on summary conviction shall not exceed one hundred pounds.

¹ See also the Larceny Act, 1861, Sects. 82, 83 and 84, *post* Appendix.

Conversion of Stock into Shares.

Conversion
of stock into
shares.
25 & 26 Vict.
c. 89.

29. Every company limited by shares, and which has in pursuance of the Companies Act, 1862,¹ converted any portion of its shares into stock, may so far modify the conditions in its memorandum of association, if authorised to do so by its articles as originally framed or as altered by special resolution in manner provided in the Companies Act, 1862,² as to reconvert³ such stock into paid-up shares of any denomination.

¹ Section 12 thereof, *ante* p. 5.

² Section 50 thereof, *ante* p. 22.

³ Companies Act, 1862, Sect. 28, *ante* p. 13, as to notice of reconversion.

Supplemental.

Definitions.

30. In this Act, unless the context otherwise requires,—

The expression “Companies Acts” means the Companies Act, 1862, and the Acts amending the same;

The expression “company” means a company registered under the Companies Acts;

The expression “director” includes any person occupying the position of director, by whatever name called;

The expression “registered” means registered under the Companies Acts;

The expression “prescribed” means prescribed by the Board of Trade;

The expression “prospectus” means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company;

The expression "debenture" includes debenture stock;

Other expressions¹ have the same meanings as in the Companies Act, 1862.

¹ For these, *see* in Index under "Definition".

31. This Act shall, except as otherwise expressed, Application of Act. apply to every company, whether formed before or after the commencement¹ of this Act.

¹ *I.e.*, 1st January, 1901, Sect. 35 *infra*.

32. The Companies (Winding-up) Act, 1890, and this Act, shall have effect as part of the Companies Act, 1862; but nothing in this section shall be construed Construction of 53 & 54 Vict. c. 63. and of Act. as extending the Companies (Winding-up) Act, 1890, to Scotland or Ireland.

33.—(1.) Section twenty-five¹ of the Companies Act, 1867, and the other enactments mentioned in the schedule to this Act, to the extent specified in the third column of that schedule, are hereby repealed. Repeal.

(2.) No proceedings under section twenty-five¹ of the Companies Act, 1867, shall be commenced after the commencement of this Act.

¹ *Ante* p. 153; but that Section may possibly still apply to shares issued before 1901. *See* Interpretation Act, 1889, Sect. 38. *post* Appendix.

34. This Act shall apply to Scotland, subject to the following provisions and modifications:— Application to Scotland.

(1.) "Solicitor of the High Court" shall mean enrolled law agent;

(2.) The provisions of this Act with respect to the registration of mortgages and charges shall not apply to companies registered in Scotland;

(3.) All prosecutions for offences or fines shall be at the instance of the Lord Advocate or a procurator fiscal as the Lord Advocate may direct.

35. This Act shall, except as otherwise expressed, Commencement. come into operation on the first day of January one thousand nine hundred and one.

36. This Act may be cited as the Companies Act, 1900, and may be cited with the Companies Acts, 1862 to 1898. Short title.

themselves convene the meeting, but any meeting so convened shall not be held after three months from the date of such deposit.

(4.) If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith convene a further extraordinary general meeting for the purpose of considering the resolution and, if thought fit, of confirming it as a special resolution; and, if the directors do not convene the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves convene the meeting.

(5.) Any meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

Mortgages and Charges.

Registration of mortgages and charges.

* 14.—(1.) Every mortgage or charge created by a company after the commencement of this Act and being either—

- (a) a mortgage or charge for the purpose of securing any issue of debentures;¹ or
- (b) a mortgage or charge on uncalled capital of the company; or
- (c) a mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale; or
- (d) a floating charge on the undertaking or property of the company,

shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless filed with the registrar for registration in manner required by this Act² within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured.

(2.) Where the mortgage or charge comprises property outside the United Kingdom, it shall, so far as

that property is concerned, be sufficient compliance with the requirements of this section, if a deed purporting to specifically charge such property be registered notwithstanding that further proceedings may be necessary to make such mortgage or charge valid or effectual according to the law of the country in which such property is situate.

(3.) The registrar shall keep, with respect to each company, a register in the³prescribed form⁴of all such mortgages and charges created by the company after the commencement of this Act, and requiring registration under this section, and shall, on payment of the prescribed fee,⁵ enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.

(4.) Provided that where a series of debentures containing any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall be sufficient to enter on the register—

- (a) the total amount secured by the whole series;
and
- (b) the dates of the resolutions creating the series
and of the covering deed, if any, by which the security is created or defined; and
- (c) a general description of the property charged;
and
- (d) the names of the trustees, if any, for the debenture holders.

(5.) Where more than one issue is made of debentures in the same series, the company may require the registrar to enter on the register the date and amount of any particular issue, but an omission to do this shall not effect the validity of the debentures issued.

(6.) The registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of this section, stating the amount thereby secured (which certificate shall be conclusive

evidence that the requirements of this section as to registration have been complied with), and the company shall cause a copy of the certificate so given to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered.

(7.) It shall be the duty of the company to register every mortgage or charge created by the company and requiring registration under this section, and for that purpose to supply the registrar with the particulars required for registration;⁵ but any such mortgage or charge may be registered on the application of any person interested therein.

(8.) The register kept, in pursuance of this section, of the mortgages and charges of each company shall be open to inspection by any person on payment of the prescribed fee,⁴ not exceeding one shilling for each inspection.

(9.) Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under this section, to be kept at the registered office of the company, and to be open to inspection by the members and creditors of the company on payment of such fee, not exceeding one shilling for each inspection, as may be fixed by the regulations of the company. Provided that in the case of a series of uniform debentures a copy of one such debenture shall be sufficient.

** Repealed by Companies Act, 1907, Sect. 51, and 4th Schedule (post p. 291) [Sect. 10 thereof (post p. 260) being substituted] as regards all charges created after 30th June, 1908, but this Section is still operative upon all charges created between 31st December, 1900, and 1st July, 1908. See the Interpretation Act, 1889, Sect. 38, set out in Appendix.*

¹ Including debenture stock, Sect. 30, *post* p. 239.

² Sub-Sect. 3 and following Sub-Sects. of this Section.

³ By Board of Trade, Sect. 30, *post* p. 238.

⁴ Board of Trade form (No. 47), *post* p. 247.

⁵ See for fees prescribed under this Sect., *post* p. 249.

rectifica-
tion of
register.

15. A judge of the High Court, on being satisfied that the omission to register a mortgage or charge within the time required by this Act,¹ or the omission or misstatement of any particular with respect to any such mortgage or charge, was accidental, or due to

inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief² may, on the application of the company or any person interested, and on such terms and conditions as seem to the judge just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or misstatement be rectified.

¹ Twenty-one days after creation of charge, Sect. 14 (1), *ante* p. 230.

² See further as to granting relief to directors in similar circumstances, Companies Act, 1907, Sect. 32, *post* p. 278.

16. The registrar may, on evidence being given to his satisfaction that the debt for which any registered mortgage or charge was given has been paid or satisfied, order that a memorandum of satisfaction¹ be entered on the register, and shall if required furnish the company with a copy² thereof. Entry of satisfaction

¹ Board of Trade form (No. 49) and fees, *post* p. 249.

² On fee of 5s., *London Gazette*, 1st January, 1901.

17. The registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars, to the mortgages or charges registered under this Act. Index to registers of mortgages and charges.

18. If any company makes default in complying with the requirements of this Act as to the registration of any mortgage or charge created by the company, the company and every director, manager, and other officer of the company, who knowingly and wilfully authorised or permitted such default shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred pounds; and if any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock required by this Act to be registered, without a copy of the certificate of the registrar being endorsed upon it,² he shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred pounds. Penalties.

¹ See Companies Act, 1907, Sect. 32, *post* p. 278, as to obtaining relief from the Court for breach of personal duty in certain cases.

² As required by Sect. 14 (6), *ante* p. 231.

Annual Summary.

Annual
summary.
25 & 26 Vict.
c. 89.

19.—(1.) The summary mentioned in section twenty-six of the Companies Act, 1862,¹ shall be so framed as to distinguish between the shares issued for cash and the shares issued otherwise than for cash or only partly for cash, and shall, in addition to the particulars required by that section to be specified, also specify—

- (a) the total amount of debt due from the company in respect of all mortgages and charges which require registration under this Act, or which would require such registration if created after the commencement of this Act;² and
- (b) the names and addresses of the persons who are the directors of the company³ at the date of the summary.

(2.) The list and summary mentioned in the said section twenty-six must be signed by the manager or by the secretary of the company.

¹ *Ante* p. 12, enlarged by Sect. 21 of Companies Act, 1907, *post* p. 272, except as to private companies.

² Under Sect. 14, *ante* p. 230.

³ Board of Trade form (No. 6B), *post* p. 240.

Amend-
ment of 25 &
26 Vict. c.
89. ss. 45, 46.

20. Sections forty-five and forty-six of the Companies Act, 1862,¹ shall apply to companies having a capital divided into shares, and the words “and not having a capital divided into shares” in those sections shall be repealed.

¹ *Ante* p. 21.

*Audit.*¹

Appoint-
ment of
auditors.

21.—(1.) Every company shall at each annual general meeting² appoint an auditor or auditors to hold office until the next annual general meeting.

(2.) If an appointment of auditors is not made at an annual general meeting, the Board of Trade may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services.

(3.) A director or officer of the company shall not be capable of being appointed auditor of the company.

(4.) The first auditors of the company may be appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting, unless previously removed by a resolution of the shareholders in general meeting, in which case the shareholders at such meeting may appoint auditors.

(5.) The directors of a company may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act.

¹ See the Companies Act, 1907, Sect. 19 (4), *post* p. 271.

² See Companies Act, 1907, Sect. 24, *post* p. 273.

22. The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting,¹ or to fill any casual vacancy,² may be fixed by the directors. Remuneration of auditors.

¹ Sect. 21 (4).

² Sect. 21 (5).

23.* Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors, and the auditors shall sign a certificate at the foot of the balance sheet stating whether or not all their requirements as auditors have been complied with, and shall make a report to the shareholders on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office; and in every such report shall state whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs as shown by the books of the company; and such report shall be read before the company in general meeting. Rights and duties of auditors.

* Repealed by Companies Act, 1907, Sect. 19, *post* p. 270, which is substituted.

Winding up.

24. The provisions of section two¹ of the Joint Stock Companies Arrangement Act, 1870, shall apply not only as between the company and the creditors, or any class thereof, but as between the company and the members, or any class thereof.

Application
of 33 & 34
Vict. c. 104.
a. 2.

¹ *Ante* p. 159.

25. In a voluntary winding up an application under section one hundred and thirty-eight¹ of the Companies Act, 1862, may be made by any creditor² of the company.

Amendment
of 25 & 26
Vict. c. 89.
a. 128, as to
applica-
tions.

¹ *Ante* p. 58.

² Who may also apply to the Court as to the appointment of liquidators or committee of inspection under Companies Act 1907, Sect. 27 (2), *post* p. 275.

Defunct Companies.

Amendment
of law as to
striking
names of
defunct
companies
off register.

26.—(1.) Where a company is being wound up and the registrar has reasonable cause to believe that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months after notice by the registrar demanding the returns has been sent by post to the registered address of the company, or to the liquidator at his last known place of business, the provisions of section seven¹ of the Companies Act, 1880, shall apply in like manner as if the registrar had not within one month after sending the second letter therein mentioned received any answer thereto.

33 Vict. c. 19.

(2.) In sub-section five² of the said section seven, after the words "or member," in each place where they occur, shall be inserted the words "or creditor," and in the same sub-section, after the word "operation," the words "or otherwise" shall be substituted for the word "and".

¹ *Ante* p. 156.

² *Ante* p. 157.

Companies limited by Guarantee.¹

27.—(1.) A company limited by guarantee shall not be capable of having a capital divided into shares, unless the memorandum of association so provides, and specifies the amount of its capital (subject to increase or reduction in accordance with the Companies Acts) and the number of shares into which the capital is divided.

Provisions
as to com-
panies
limited by
guarantee.

(2.) Every provision in any memorandum or articles of association or resolution of a company (whether limited by guarantee or otherwise) purporting to divide the undertaking of the company into shares or interests shall for the purposes of this section be treated as a provision for a capital divided into shares, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

(3.) In the case of a company limited by guarantee and not having a capital divided into shares, every provision in the memorandum or articles of association or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(4.) This section shall apply only to companies registered after the commencement of this Act.

¹ The Companies Act, 1862, Sect. 9, *ante* p. 4; Sect. 14, p. 6; Sect. 90, p. 38; Sect. 134, p. 57, and Form C, p. 116 *et seq.*

False Statements.¹

28. If any person in any return, report, certificate, balance sheet, or other document, required by or for the purposes of this Act, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of a misdemeanor, and shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, with or without hard labour, and on summary conviction to imprisonment for a term not exceeding four months, with or without

Penalty for
false state-
ment.

hard labour, and in either case to a fine in lieu of or in addition to such imprisonment as aforesaid: Provided that the fine imposed on summary conviction shall not exceed one hundred pounds.

¹ See also the Larceny Act, 1861, Sects. 82, 83 and 84, *post* Appendix.

Conversion of Stock into Shares.

Conversion
of stock into
shares.
25 & 26 Vict.
c. 89.

29. Every company limited by shares, and which has in pursuance of the Companies Act, 1862,¹ converted any portion of its shares into stock, may so far modify the conditions in its memorandum of association, if authorised to do so by its articles as originally framed or as altered by special resolution in manner provided in the Companies Act, 1862,² as to reconvert³ such stock into paid-up shares of any denomination.

¹ Section 12 thereof, *ante* p. 5.

² Section 50 thereof, *ante* p. 22.

³ Companies Act, 1862, Sect. 28, *ante* p. 13, as to notice of reconversion.

Supplemental.

Definitions.

30. In this Act, unless the context otherwise requires,—

The expression “Companies Acts” means the Companies Act, 1862, and the Acts amending the same;

The expression “company” means a company registered under the Companies Acts;

The expression “director” includes any person occupying the position of director, by whatever name called;

The expression “registered” means registered under the Companies Acts;

The expression “prescribed” means prescribed by the Board of Trade;

The expression “prospectus” means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company;

The expression "debenture" includes debenture stock;

Other expressions¹ have the same meanings as in the Companies Act, 1862.

¹For these, *see* in Index under "Definition".

31. This Act shall, except as otherwise expressed, Application of Act. apply to every company, whether formed before or after the commencement¹ of this Act.

¹ *I.e.*, 1st January, 1901, Sect. 35 *infra*.

32. The Companies (Winding-up) Act, 1890, and this Act, shall have effect as part of the Companies Act, 1862; but nothing in this section shall be construed Construction of 53 & 54 Vict. c. 63. and of Act. as extending the Companies (Winding-up) Act, 1890, to Scotland or Ireland.

33.—(1) Section twenty-five¹ of the Companies Act, 1867, and the other enactments mentioned in the schedule to this Act, to the extent specified in the third column of that schedule, are hereby repealed. Repeal.

(2.) No proceedings under section twenty-five¹ of the Companies Act, 1867, shall be commenced after the commencement of this Act.

¹ *Ante* p. 153; but that Section may possibly still apply to shares issued before 1901. *See* Interpretation Act, 1889, Sect. 38. *post* Appendix.

34. This Act shall apply to Scotland, subject to the following provisions and modifications:— Application to Scotland.

- (1.) "Solicitor of the High Court" shall mean enrolled law agent;
- (2.) The provisions of this Act with respect to the registration of mortgages and charges shall not apply to companies registered in Scotland;
- (3.) All prosecutions for offences or fines shall be at the instance of the Lord Advocate or a procurator fiscal as the Lord Advocate may direct.

35. This Act shall, except as otherwise expressed, Commence-ment. come into operation on the first day of January one thousand nine hundred and one.

36. This Act may be cited as the Companies Act, Short title. 1900, and may be cited with the Companies Acts, 1862 to 1898.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
25 & 26 Vict. c. 89. -	The Companies Act, 1862.	Section eighteen, from "A certificate" to the end of the section. In sections forty-five and forty-six, the words "and not having a capital divided into shares." Section one hundred and ninety-two.
30 & 31 Vict. c. 131. -	The Companies Act, 1867.	Sections twenty-five, thirty-eight, and thirty-nine.

TABLE OF FORMS directed by the **BOARD OF TRADE** to be used for the purposes of the Companies Act, 1900, together with the fees * relating thereto, published in the *London Gazette*, 1st January, 1901.

No. of Certificate FORM No. 6B.
Names and addresses of the persons who are the Directors
of the Limited, on the
day of 19
(Pursuant to Sect. 19 (1) (b) of 63 and 64 Vict., ch. 48.)

Names.	Addresses.
	Signature
	Description (i.e., Manager or Secretary).

NOTE.—This List should be annexed to the Annual Return immediately after the list of Members.

* By a Treasury order, dated 31st January, 1901, all fees payable to the Registrar of Joint Stock Companies are to be collected by means of impressed stamps, except in the case of copies of registered documents supplied to the public, to which adhesive stamps are to be affixed.

THE COMPANIES ACT, 1900.

241

No. of Certificate

FORM No. 9.

THE COMPANIES ACTS, 1862 to 1900.

Copy of Register of Directors or Managers of the Company,

Pursuant to Sects. 45 and 46 of 25 and 26 Vict., c. 89, and Sect. 20 of 63 and 64 Vict., c. 48.

This Notice should be signed by the Secretary of the Company.

Presented for filing by

Copy of the Register of Directors or Managers of the Company, , and of any changes therein.

Names.	Addresses.	Occupations.	¹ Changes.
			(Signature)

¹ A complete list of the existing Directors or Managers should always be given. A note of the changes since the last List was filed should be made in this column, *e.g.*, by placing against a new director's name the words "in place of" and by writing against any former director's name the words "dead," "resigned," or as the case may be.

Fee on presentation for filing, 5s.

No. of Certificate

FORM No. 41.

COMPANIES ACTS, 1862 to 1900.

DECLARATION of Compliance with the requisitions of the Companies Acts, made pursuant to Sect. 1 (2) of the Companies Act, 1900 (63 and 64 Vict. Ch. 48) on behalf of a Company proposed to be registered as the

Presented for filing by

I of do solemnly and sincerely declare that I am¹ , of the Limited, and that all the requisitions of the Companies Acts in respect of matters precedent to the registration of the said Company and incidental

¹ Here insert : " A Solicitor of the High Court engaged in the formation " ; or " a Director or Secretary named in the Articles of Association " .

thereto have been complied with. And I make this solemn Declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act, 1885.

Declared at the day of one thousand
nine hundred and before me, , a Commissioner
for Oaths.

Fee on presentation for filing, 5s.

No. of Certificate .

FORM No. 42.

COMPANIES ACTS, 1862 to 1900.

Consent to act as Director of the Limited, to be
signed and filed pursuant to Sect. 2 (1) (i) of the Companies Act,
1900 (63 and 64 Vict. Ch. 48).

Presented for filing by .

To the Registrar of Joint Stock Companies :—

¹ , the undersigned, hereby testify ² consent
to act as director of the Limited, pursuant to S. 2 (1)
(i) of the Companies Act, 1900.

² Signature.	Address.	Description.

Dated this of 190 .

¹ Here insert "I" or "We".

² Here insert "My" or "Our".

³ If a director signs by "his agent authorised in writing," the authority must be produced and a copy filed.

Fee on presentation for filing with Registrar, 5s.

No. of Certificate .

FORM No. 43

COMPANIES ACTS, 1862 to 1900.

List of the persons who have consented to be Directors of the
 Limited, to be delivered to the Registrar pursuant
to Sect. 2 (2) of the Companies Act, 1900 (63 and 64 Vict. c. 48).

Presented for filing by .

To the Registrar of Joint Stock Companies :—

¹ , the undersigned, hereby give you notice, pur-
suant to Sect. 2 (2) of the Companies Act, 1900, that the follow-

¹ Here insert "I" or "We".

ing persons have consented to be Directors of the Limited.

Name.	Address.	Description.

Signature, Address, and Description of Applicant for Registration

Dated this day of 190 .

Fee on presentation for filing, 5s.

No. of Certificate

FORM No. 44.

COMPANIES ACTS, 1862 to 1900.

DECLARATION made on behalf of the Limited,
that the conditions of Sect 6 (1) of the Companies Act, 1900
(63 and 64 Vict. c. 48), have been complied with.

Presented for filing by

I of being¹ of the
Limited, do solemnly and sincerely declare :—

That the amount of the share capital of the Company offered
to the public for subscription is £ .

That the amount fixed by the Memorandum or Articles of
Association and named in the prospectus as the minimum sub-
scription upon which the Company may proceed to allotment
is £ .

That shares held subject to the payment of the whole amount
thereof in cash have been allotted to the amount of £ .

That every director of the Company has paid to the Company
on each of the shares taken or contracted to be taken by him
and for which he is liable to pay in cash, a proportion equal to
the proportion payable on application and allotment on the
shares offered for public subscription.

And I make this solemn declaration conscientiously believing
the same to be true, and by virtue of the provisions of the
Statutory Declarations Act, 1835.

Declared at the day of one thousand
nine hundred and before me, ,
a Commissioner for Oaths.

Fee on presentation for filing, 5s.

¹ Insert here "the Secretary," or "a Director".

No. of Certificate .

FORM No. 46

COMPANIES ACTS, 1862 to 1900.

REPORT pursuant to Sect. 12 of the Companies Act, 1900 (63 and 64 Vict. c. 48) of the Limited, to be certified by not less than two Directors, or by one Director or Manager whenever there is only one, and forwarded at least seven days before the Statutory Meeting to every Member of the Company; and to be filed with the Registrar forthwith after the sending thereof to the Members of the Company (Sect. 12 (4)).

NOTE.—This form has been provided for the purpose of indicating the nature of the information that is required; but as the report to be filed must be a copy of that sent to the shareholders, all that is contained in that report must appear in this.

(a) The total number of shares allotted is _____ of which
are allotted ¹ _____ in consideration of
and upon each of the remaining shares the sum of
has been paid in cash.

(b) The total amount of cash received by the Company in respect of the shares issued wholly for cash is £ _____ and on the shares issued partly for cash is £ _____.

(c) The receipts and payments of the Company on capital account to the date of this report are as follows:—

¹ Here state as "fully paid up" or "paid up otherwise than in cash to the extent of _____ per share".

Particulars of Receipts.				Particulars of Payments.			

Presented for filing by _____ .

The following is an account (or estimate) of the preliminary expenses of the Company.

--	--	--

(d) Names, addresses, and descriptions of the Directors Auditors (if any), Manager (if any), and Secretary of the Company.

DIRECTORS.

Surname.	Christian Name.	Address.	Description.

AUDITORS.

--	--	--	--

MANAGER.

--	--	--	--

SECRETARY.

--	--	--	--

(e) Particulars of any contract the modification of which is to be submitted to the Meeting for its approval, together with the particulars of the modification or proposed modification.

We hereby certify this report.

} Two
Directors.

We hereby certify that so much of this report as relates to the shares allotted by the Company and to the cash received in respect of such shares and to the receipts and payments of the Company on capital account is correct.

} Auditors.

Fee on presentation for filing, 5s.

No. of Certificate .

FORM No. 47.

COMPANIES ACTS, 1862 to 1900.

PARTICULARS to be supplied to the Registrar pursuant to Sect. 14 (7) of the Companies Act, 1900 (63 and 64 Vict., c. 48), of a mortgage or charge created by the Limited, and being:—

- ¹(a) a mortgage or charge for the purpose of securing any issue of debentures; or
- (b) a mortgage or charge on uncalled capital of the Company; or
- (c) a mortgage or charge created or evidenced by an instrument, which, if executed by an individual, would require registration as a bill of sale; or
- (d) a floating charge on the Undertaking or property of the Company.

¹Strike out the sub-heads (a), (b), (c) or (d) which do not apply.

(NOTE.—The original instrument evidencing the mortgage or charge must be presented with this Return within twenty-one days after the date of its creation (Sect. 14 (1)), accompanied by the particulars set out on this form.)

Presented for filing by .

Particulars of a Mortgage or Charge Created by the Limited.				
(1) Date of creation of the Mortgage or Charge; or, in the case of a series of Debentures, the date of the Covering Deed (if any) by which the Security is created or defined.	(2) Amount secured by the Mortgage or Charge; or, in the case of a series of Debentures, the total amount secured by the whole series.	(3) Dates of Resolutions creating the series of Debentures.	(4) Short particulars of the Property Mortgaged or Charged; or, in the case of a series of Debentures, a General Description of the Property Charged.	(5) Names (with Addresses and Descriptions) of the Mortgagees or persons entitled to the charge; or, in the case of a series of Debentures, the names, etc., of the Trustees (if any) for the Debenture-holders.
				<div>(6)</div> <div>Where more than one issue of Debentures in same series.</div> <div> <div>Date of present issue.</div> <div>Amount of present issue.</div> <div>Total amount previously issued of this series (if any).</div> </div>
				Signature

THE COMPANIES ACT, 1900.

249

Fees under Sect. 14 for registering any mortgage or charge created by a Company :—

Where the amount of the mortgage or charge does not exceed £200, 10s.

Where it does exceed £200, £1.

Certificate of registration of any mortgage or charge after the first Certificate, 5s.

Provided that, in the case of a series of debentures, registered in accordance with Sub-Sects. 4 and 5 of Sect. 14 of the said Act, the above fees shall be charged on the first debenture of such series and a further fee of 6d. on each subsequent debenture of the series.

For inspecting the register of mortgages and charges :—

For each inspection, 1s.

No. of Certificate

FORM No. 49.*

COMPANIES ACTS, 1862 TO 1900.

DECLARATION verifying Memorandum of Satisfaction of Mortgage or charge to be entered on the register pursuant to Sect. 16 of the Companies Act, 1900.

2s. 6d.

Inland Revenue
Stamp.

The _____ Limited.
We _____ of _____ a Director
of the above-named Company, and _____ of
the Secretary of the above-named Company,
solemnly and sincerely declare that the particulars contained
in the Memorandum of Satisfaction annexed hereto, and dated
, are true, to the best of our knowledge,
information and belief.

And we make this solemn declaration, conscientiously believing
the same to be true, and by virtue of the provisions of the
Statutory Declaration Act, 1835.

Declared at _____ the _____ day of _____ 190
before me, a Commissioner for Oaths.

* This form was substituted for that originally used by order
of the Board of Trade in March, 1906.

5s.
Registration Fee
Stamp.

The Limited hereby gives notice that the¹
 dated the day of one thousand
nine hundred and , and created by the Company for
securing the sum of £ was satisfied to the extent
of £ on the of 190 .

In witness whereof the common seal of the Company was
hereunto affixed the day of one thousand nine
hundred and in the presence of

} Directors.



Presented for filing by

Secretary.

¹ Insert here "mortgage" or "charge," "debentures" or
"debenture stock," as the case may be.

COMPANIES ACT, 1907.

An Act to amend the Companies Acts, 1862 to 1900. Cap. 50.
[28th August, 1907.]

Prospectus¹ and Allotment.²

1.—(1) A company³ which does not issue a prospectus⁴ Obligations of companies where no prospectus is issued. on or with reference to its formation shall not allot any of its shares or debentures unless before the first allotment of either shares or debentures there has been filed with the registrar a statement in lieu of prospectus, signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, in the form and containing the particulars set out in the First⁵ Schedule to this Act.

(2) Sections two,⁶ six,⁷ and eleven⁸ of the Companies Act, 1900, as amended by this Act, shall apply to companies which do not issue a prospectus⁴ 63 & 64 Vict. c. 48. inviting public subscription of their shares, subject to the modifications set out in the Second Schedule to this Act.

(3)⁹ In the case of the first allotment of share capital payable in cash of a company which does not issue any invitation to the public to subscribe for its shares, no allotment shall be made unless the minimum subscription (that is to say):—

- (a) the amount (if any) fixed by the memorandum or articles of association and named in the statement in lieu of prospectus as the minimum subscription upon which the directors may proceed to allotment; or
- (b) if no amount is so fixed and named, then the whole amount of the share capital other than

that issued or agreed to be issued as fully or partly paid up otherwise than in cash, has been subscribed and an amount not less than five per cent. of the nominal amount of each share payable in cash has been paid to and received by the company.

(4) Section five¹⁰ of the Companies Act, 1900, shall apply as if the foregoing provisions of this section were included amongst the foregoing provisions of that Act mentioned in the said section five.

(5) This section shall not apply to private companies as defined¹¹ by this Act, or to any company which has allotted any shares or debentures before the commencement¹² of this Act.

¹ See generally Sects. 9, 10 and 11, of Companies Act, 1900, *ante* pp. 222 to 227.

² See generally Sects. 4 to 8 of Companies Act, 1900, *ante* pp. 218 to 222.

³ Excepting those Companies within Subsect. 5 of this Sect., *infra*.

⁴ Defined Companies Act, 1900, Sect. 30, *ante* p. 238.

⁵ *Post* p. 286.

⁶ *Ante* p. 216.

⁷ *Ante* p. 220.

⁸ *Ante* p. 227.

⁹ For similar restrictions on commencing business or borrowing, see Companies Act, 1900, Sect. 6, *ante* p. 220.

¹⁰ *Ante* p. 219.

¹¹ Sect. 37 (1), *post* p. 231.

¹² *I.e.*, 1st July, 1908, Sect. 52 (3), *post* p. 285.

Amend-
ment of 63
& 64 Vict. c.
48, s. 10.*

2.—(1) The following subsection shall be substituted for subsection one¹ of section ten of the Companies Act, 1900 :—

“(1) Every prospectus² issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state—

“(a) the contents of the memorandum of association, with the names, descriptions, and addresses of

* This Subsection re-enacts the repealed Subsection with the addition of various words and Clauses which are here printed in black type.

the signatories, and the number of shares subscribed for by them respectively; and the number of founders or management **or deferred shares**, if any, and the nature and extent of the interest of the holders in the property and profits of the company; and

- “(b) the number of shares, if any, fixed by the articles of association as the qualification of a director, and any provision in the articles of association as to the remuneration of the directors; and
- “(c) the names, descriptions, and addresses of the directors or proposed directors; and
- “(d) the minimum subscription³ on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and in the case of a second or subsequent offer of shares the amount offered for subscription on each previous allotment **made within the two preceding years**, and the amount actually allotted; and the amount, if any, paid on such shares; and
- “(e) the number and amount of shares and debentures **which within the two preceding years have been issued**, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which such shares or debentures have been issued or are proposed or intended to be issued; and
- “(f) the names and addresses of the vendors⁴ of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of publication⁵ of the prospectus, and the amount payable in cash, shares, or debentures to the vendor, and, where there is

more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor; **provided that, where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors; and**

- “(g) the amount (if any) paid or payable as purchase money in cash, shares, or debentures of any such property as aforesaid, specifying the amount (if any) payable for goodwill; and
- “(h) the amount (if any) paid **within the two preceding years** or payable as commission⁶ for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission; **provided that it shall not be necessary to state the commission payable to sub-underwriters; and**
- “(i) the amount or estimated amount of preliminary expenses; and
- “(j) the amount paid **within the two preceding years** or intended to be paid to any promoter⁷ and the consideration for any such payment; and
- “(k) the dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected; **Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than two⁸ years before the date of publication of the prospectus; and**
- “(l) the names and addresses of the auditors⁹ (if any) of the company; and
- “(m) full particulars of the nature and extent of the interest (if any) of every director in the promotion⁷ of, or in the property proposed to be acquired by, the company, or, where the inter-

est of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify¹⁰ him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company; and

“(n) where the company is a company having shares of more than one class,¹¹ the right of voting at meetings of the company conferred by the several classes of shares respectively.”

(2) The said section of the Companies Act, 1900, shall not apply to a circular or notice inviting existing members or debenture holders of the company to subscribe for shares or debentures of the company, whether with or without the right to renounce in favour of other persons, and accordingly in subsection four¹² of that section for the words “for further shares or debentures” there shall be substituted the words “for shares or debentures of the company, whether with or without the right to renounce in favour of other persons.”

¹ *Ante* p. 223.

² Defined Companies Act, 1900, Sect. 20, *ante* p. 238.

³ *See* Companies Act, 1900, Sect. 4, *ante* p. 218.

⁴ Companies Act, 1900, Sect. 10 (2 and 3), *ante* p. 225.

⁵ *See* Companies Act, 1900, Sect. 9 (1), *ante* p. 222.

⁶ Companies Act, 1900, Sect. 8, *ante* p. 221, as amended by Sect. 8 hereof, *post* p. 259.

⁷ *See* Directors' Liability Act, 1890, Sect. 3, *ante* p. 204.

⁸ “Three” in Sect. 10 (1), (k), of Companies Act, 1900, *ante* p. 224.

⁹ Companies Act, 1900, Sect. 21, *ante* p. 234.

¹⁰ Companies Act, 1900, Sects. 2 and 3, *ante* pp. 216 to 218.

¹¹ Table A, (revised), Clauses 3 and 4, *ante* pp. 93, 94.

¹² *Ante* p. 225.

3. If a prospectus is issued without a copy thereof being filed for registration as required by section nine of the Companies Act, 1900, the company and every

Penalty for
failure to
file pro-
spectus.

person who is knowingly a party to the issue of the prospectus shall on conviction be liable to a fine ² not exceeding five pounds for every day from the date of the issue of the prospectus until a copy thereof is so filed.

¹ *Ante* p. 223.

² Recoverable summarily, Sect 49, *post* p. 285.

Simultaneous offer and allotment of shares and debentures.

4. The following provision shall be substituted for subsection four ¹ of section six of the Companies Act, 1900 :—

“(4) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures, or the receipt of any money payable on application for debentures.”

¹ *Ante* p. 220.

Limitation of time for issue of certificates.

5.—(1) Every company shall within two months after the allotment of any of its shares, debentures, or debenture stock, and within two months after the registration of the transfer of any such shares, debentures or debenture stock, complete and have ready for delivery the certificates ¹ of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures, or debenture stock otherwise provide.

(2) If default is made in complying with the requirements of this section, the company, and every director, manager, secretary, and other officer of the company who is knowingly a party to the default, shall on conviction be liable to a fine ² not exceeding five pounds for every day during which the default continues.

¹ Companies Act, 1862, Sect. 31, *ante* p. 14, and Table A (revised), Clause 6, *ante* p. 94.

² Recoverable summarily, Sect. 49, *post* p. 285.

Filing of contracts of allotment of shares not payable in

6.—(1) Where such a contract as is mentioned in paragraph (b) ¹ of subsection (1) of section seven of the Companies Act, 1900, is not reduced to writing, the company shall within the time limited ² in the said section file with the registrar the prescribed particulars

of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing.

(2) Such particulars shall be deemed to be an instrument within the meaning of the Stamp Act, 1891, and the registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section twelve of that Act.

(3) The provisions ³ of section seven of the Companies Act, 1900, imposing penalties for default shall apply as if the requirement of this section were a requirement contained in that section.

(4) If default has been made in filing with the registrar within the time limited by section seven of the Companies Act, 1900, any document required to be filed by that section or this section, the company, or any person liable for the default, may apply to the court for relief, and the court, if satisfied that the omission to file the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such period as the court may think proper.

¹ *Ante* p. 221.

² *I.e.*, one month after allotment.

³ *I.e.*, in Subsect. 2 thereof, *ante* p. 221.

Issue of Shares at a Discount and Payment of Commissions.

7. The total amount of the sums paid by way of commission in respect of any shares or debentures or allowed by way of discount in respect of any debentures shall be stated in the summary made under section twenty-six ¹ of the Companies Act, 1862, next after the payment of the commission or the allowance of the discount, and the total amount thereof, or so much thereof as has not been written off, shall be stated in every balance sheet ² until the whole amount thereof has been written off.

¹ *Ante* p. 12; and see also Sect. 21 hereof, *post* p. 272.

² See Sect. 19, *post* p. 270, and Table A (revised), Clause 107, *ante* p. 118.

Statement
as to com-
missions
and dis-
counts.
25 & 26
Vict. c. 89.

Amend-
ment of 63
& 64 Vict. c.
48, s. 8.

8.—(1) For removing doubts it is hereby declared that a vendor¹ to, promoter² of, or other person who receives payment in money or shares from, a company has, and always has had, power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under section³ eight of the Companies Act, 1900.

(2) The said section³ shall apply in cases where the shares are not offered to the public for subscription; provided that the payment of the commission is authorised by the articles⁴ of association of the company, and that the amount or rate paid or agreed to be paid as commission is disclosed in the statement⁵ in lieu of prospectus or in a statement⁶ in the prescribed form verified in like manner as a statement in lieu of prospectus and filed with the registrar, and, where a circular or notice, not being a prospectus, inviting subscriptions for the shares is issued, also disclosed in that circular or notice.

¹ Companies Act, 1900, Sect. 10 (2, 3), *ante* p. 225.

² Directors' Liability Act, 1890, Sect. 3 (2), *ante* p. 206.

³ *Ante* p. 221.

⁴ Companies Act, 1862, Sect. 14, *ante* p. 6.

⁵ Sect. 1, *ante* p. 251.

⁶ Companies Act, 1900, Sect. 6, *ante* p. 220; applied to Private Companies by Sect. 37 (2) hereof, *post* p. 281.

Payment of Interest out of Capital.

Power of
company
to pay
interest
out of
capital in
certain
cases.

9. Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of such share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the same to capital as part of the cost of construction of the work, building, or plant:

Provided that—

- (1) No such payment shall be made unless the same is authorised by the company's articles¹ of association or by special resolution² of the company :
- (2) No such payment, whether authorised by the articles¹ of association or by special resolution,² shall be made without the previous sanction of the Board of Trade :
- (3) Before sanctioning any such payment the Board of Trade may, at the expense of the company, appoint a person to inquire and report to them as to the circumstances of the case, and may, before making the appointment, require the company to give security for payment of the costs of the inquiry :
- (4) The payment shall be made only for such period as may be determined by the Board of Trade ; and such period shall in no case extend beyond the close of the half-year next after the half-year during which the works or buildings have been actually completed or the plant provided :
- (5) The rate of interest shall in no case exceed four per cent. per annum or such lower rate as may for the time being be prescribed by Order in Council :
- (6) The payment of such interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid :
- (7) The accounts³ of the company shall show the capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate :
- (8) Nothing in this section shall affect any company to which the Indian Railways Act, 1894,^{c. 12.} as amended by any subsequent enactment, applies.

¹ Companies Act, 1862, Sect. 14, *ante* p. 6.

² Companies Act, 1862, Sect. 51, *ante* p. 23.

³ Table A (revised), Clauses 103 to 106, pp. 117, 118.

Mortgages and Charges.

Amend-
ment of 63
& 64 Vict.
c. 48, s. 14,
as to regis-
tration of
mortgages
and
charges.

*** 10.**—(1) Every mortgage or charge created by a company after the commencement¹ of this Act and being either—

- (a) a mortgage or charge for the purpose of securing any issue of debentures;² or
- (b) a mortgage or charge on uncalled³ capital of the company; or
- (c) a mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill⁴ of sale; or
- (d) a mortgage or charge on any land, wherever situate, or any interest⁵ therein; or
- (e) a mortgage or charge on any book debts⁶ of the company; or
- (f) a floating charge⁷ on the undertaking or property of the company,

shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars⁸ of the mortgage or charge, together with the instrument (if any) by which the mortgage or charge is created or evidenced, are delivered to or received by the registrar for registration in manner required⁸ by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and where a mortgage or charge becomes void under this section the money secured thereby shall immediately become payable :

Provided that—

- (i) In the case of a mortgage or charge created out of the United Kingdom comprising solely property situate outside the United Kingdom, the delivery to and the receipt by the registrar of a copy of the instrument by which the

* This Section re-enacts Sect. 14 of Companies Act, 1900, with the addition of various words and clauses which are here printed in black type.

mortgage or charge is created or evidenced, verified in the prescribed ⁹ manner, shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and twenty-one days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in the United Kingdom, shall be substituted for twenty-one days after the date of the creation of the mortgage or charge, as the time within which the particulars and instrument or copy are to be delivered to the registrar; and

- (ii) ¹⁰ where the mortgage or charge is created in the United Kingdom but comprises property outside the United Kingdom, the instrument ¹¹ creating or purporting to create such mortgage or charge may be sent for registration notwithstanding that further proceedings may be necessary to make such mortgage or charge valid or effectual according to the law of the country in which such property is situate; and**
- (iii) where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a mortgage or charge on those book debts;**
- (iv) the holding of debentures entitling the holder to a charge on land shall not be deemed to be an interest in land.**

(2) The registrar shall keep, with respect to each company, a register in the prescribed ¹² form of all such mortgages and charges created by the company after the commencement of this Act, and requiring registration under this section, and shall, on payment of the prescribed fee, ¹³ enter in the register, with respect to every such mortgage or charge, the date of creation, the amount

secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.

(3) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall be sufficient if there are delivered to, or received by the registrar **within twenty-one days after the execution of the deed containing the charge or, if there is no such deed, after the first issue of any debentures of the series** the following particulars:—

- (a) the total amount secured by the whole series; and
- (b) the dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined; and
- (c) a general description of the property charged; and
- (d) the names of the trustees, if any, for the debenture holders:

together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series, and the registrar shall, on payment of the prescribed fee,¹³ enter such particulars in the register:

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the registrar for entry on the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

(4) Where any commission, allowance, or discount has been paid or made, either directly or indirectly by the company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or

agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required for registration under this section shall include particulars as to the amount or rate per cent. of the commission, discount, or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued :

Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this provision be treated as the issue of the debentures at a discount.

(5) The registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of this section, stating the amount thereby secured (which certificate shall be conclusive evidence that the requirements of this section as to registration have been complied with), and the company shall cause a copy of the certificate so given to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered :¹⁴

Provided that nothing in this subsection shall be construed as requiring a company to cause a certificate of registration of any mortgage or charge given under this section to be endorsed on any debenture or certificate of debenture stock which has been issued by the company before the mortgage or charge was created.

(6) It shall be the duty of the company to send to the registrar for registration the particulars of every mortgage or charge created by the company **and of the issues of debentures of a series** and requiring registration under this section, but registration of any such mortgage or charge may be effected on the application of any person interested therein, **and if the company fail to comply with the requirements of this subsection, then, unless the registration has been effected on the application of some other person, the company, and every director, manager,**

secretary, or other person who is knowingly a party to the default, shall on conviction be liable to a fine¹⁵ not exceeding fifty pounds for every day during which the default continues.

Where the registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees¹³ properly paid by him to the registrar on the registration.

(7)¹⁶ The register kept, in pursuance of this section, of the mortgages and charges of each company shall be open to inspection by any person on payment of the prescribed fee, not exceeding one shilling for each inspection.

(8) Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under this section to be kept at the registered office of the company, and to be open to inspection by the members and creditors of the company in like manner as the register of mortgages under section forty-three of the Companies Act, 1862,¹⁷ and the provisions of that section (including the penal provisions thereof) shall apply accordingly.¹⁸ Provided that, in the case of a series of uniform debentures, a copy of one such debenture shall be sufficient.

(9) Section fourteen of the Companies Act, 1900,¹⁹ is hereby repealed.

¹ *I.e.*, on or after 1st July, 1908.

² Including debenture stock. Companies Act, 1900, Sect. 30, *ante* p. 239.

³ Companies Act, 1879, Sect. 5, *ante* p. 164.

⁴ *I.e.*, under Sect. 4 of the Bills of Sale Act, 1878, set out in Appendix, *post*.

⁵ See proviso (iv) to this Subsect., *infra*.

⁶ See proviso (iii) to this Subsect., *infra*.

⁷ Sect. 13, *post* p. 266.

⁸ *I.e.*, in Subsects. 2, 3 and 4 hereof, *infra*.

⁹ *I.e.*, by the Board of Trade, Companies Act, 1900, Sect. 30, *ante* p. 238.

¹⁰ But this Section is not to apply to companies registered in Scotland. Companies Act, 1900, Sect. 34 (2), *ante* p. 239, and Companies Act, 1907, Sect. 52 (1), *post* p. 285.

¹¹ These new words are substituted for "a deed purporting to specifically charge such property" in Sect. 14 (2) of the Companies Act, 1900, *ante* p. 230.

¹² *I.e.*, by the Board of Trade, Companies Act, 1900, Sect. 30, *ante* p. 238.

¹³ *I.e.*, by the Board of Trade, Companies Act, 1900, Sect. 30, *ante* p. 238.

¹⁴ *See* Companies Act, 1900, Sect. 18, *ante* p. 233, for consequences of failure to so endorse.

¹⁵ Recoverable summarily, Sect. 49, *post* p. 285.

¹⁶ *Cf.* Sect. 17, *post* p. 269, as to inspection of the register of mortgages required by Sect. 43 of Companies Act, 1862, *ante* p. 20.

¹⁷ *Ante* p. 20.

¹⁸ *See* further as to inspection by debenture and shareholders, Sect. 18, *post* p. 269.

¹⁹ *Ante* pp. 216 *et seq.*

11.—(1) If any person obtains an order for the appointment of a receiver ¹ or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order or of the appointment under the powers contained in the instrument, give notice of the fact to the registrar, and the registrar shall, on payment of the prescribed fee,² enter the fact on the register ³ of mortgages and charges.

(2) Where, at the commencement ⁴ of this Act, any such receiver ¹ or manager is acting under an order or appointment made before the commencement of this Act, the notice shall be given within seven days after the commencement of this Act.

(3) If any person makes default in complying with the requirements of this section he shall on conviction be liable to a fine ⁵ not exceeding five pounds for every day during which the default continues.

¹ *See* further as to such, Sect. 41, *post* p. 283.

² *I.e.*, by the Board of Trade, Companies Act, 1900, Sect. 30, *ante* p. 238.

³ Required to be kept by Sect. 10 (2), *ante* p. 262.

⁴ *I.e.*, 1st July, 1908, Sect. 52 (3), *post* p. 285.

⁵ Recoverable summarily, Sect. 49, *post* p. 285.

12.—(1) It shall be the duty of a company within three months after the commencement ¹ of this Act to send to the registrar for registration a statement of the total amount outstanding at the commencement of this Act of the debts of the company secured by mortgages

Registration of enforcement of security.

Registration of secured debts created before 1st of July, 1908.

or charges created before the commencement¹ of this Act, which under the provisions² of this Act would have required registration had they been created after the commencement of this Act,³ except those already required to be registered under section fourteen of the Companies Act, 1900,⁴ and the registrar shall, on payment of the prescribed fee,⁵ enter those particulars on the register of mortgages and charges:

Provided that the neglect of the company to comply with the provisions of this subsection shall not prejudice the rights under any such mortgage or charge of any person in whose favour the mortgage or charge was made.

(2) If the company fail to comply with the requirements of this section, the company, and every director, manager, secretary, or other person who is knowingly a party to the default, shall on conviction be liable to a fine⁶ not exceeding fifty pounds for every day during which the default continues.

¹ *I.e.*, 1st July, 1908, Sect. 52 (3), *post* p. 285.

² *I.e.*, Sect. 10, *ante* p. 260.

³ *I.e.*, created between 31st Dec., 1900, and 1st July, 1908.

⁴ *Ante* p. 230.

⁵ *I.e.*, by the Board of Trade, Companies Act, 1900, Sect. 30, *ante* p. 238.

⁶ Recoverable summarily, Sect. 49, *post* p. 285.

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13. ¹ Where a company is being wound up, a floating charge on the undertaking or property of the company created within three months of the commencement² of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum.

¹ *Cf.* Companies Act, 1862, Sect. 164, *ante* p. 68, as to avoiding Acts which amount to fraudulent preference.

² Winding up, if voluntary, commences at passing of resolution to wind up (Companies Act, 1862, Sect. 130, *ante* p. 54); if compulsory, at presentation of petition to wind up (Companies Act, 1862, Sect. 84, *ante* p. 37).

14. For removing doubts it is hereby declared that a condition contained in any debentures or in any deed for securing debentures, whether issued or executed before or after the passing ¹ of this Act, shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

¹ *I.e.*, 28th Aug., 1907, at which date this Section came into force, Sect. 52 (3), *post* p. 285.

15.—(1) Where either before or after the passing ¹ of this Act a company has redeemed any debentures previously issued, the company, unless the articles of association of the company or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do, and not being an obligation enforceable only by the person to whom the redeemed debentures were issued, or his assigns, shall have power, and shall be deemed always to have had power, to keep the debentures alive for the purposes of re-issue, and where a company has purported to exercise such a power the company shall have power, and shall be deemed always to have had power, to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place, and upon such a re-issue the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued.

(2) Where with the object of keeping debentures alive for the purpose of re-issue they have either before or after the passing of this Act been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.

(3) Where a company has either before or after the passing of this Act deposited any of its debentures to

secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(4) The re-issue of a debenture or the issue of another debenture in its place under this section, whether made before or after the passing of this Act, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued: Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

(5) Nothing in this section shall prejudice—

- (a) the operation of any judgment or order of a court of competent jurisdiction pronounced or made before the seventh day of March one thousand nine hundred and seven as between the parties to the proceedings in which the judgment was pronounced or the order made, and any appeal from any such judgment or order shall be decided as if this Act had not been passed; or
- (b) any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished reserved to a company by its debentures or the securities for the same.

¹ *I.e.*, 28th Aug., 1907, at which date this Section came into force, Sect. 52 (3), *post* p. 285; but see Subsect. 5 *infra*, as to cases adjudicated upon before 7th March, 1907.

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16. A contract with a company to take up and pay

for any debentures of the company may be enforced by an order for specific performance.

17. The register of mortgages required by section forty-three of the Companies Act, 1862,¹ shall be open to inspection by any person other than a creditor or member of the company on payment of such fee, not exceeding one shilling for each inspection, as may be fixed by regulations of the company, and that section shall apply accordingly.

* A similar provision with regard to the register of mortgages kept by the registrar is contained in Sect. 10 (7), *ante* p. 264.

¹ *Ante* p. 20.

18.—(1) Every register of holders of debentures of a company shall, except when closed¹ in accordance with the articles of the company during such period or periods (not exceeding in the whole thirty days in any year) as may be specified in the articles, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and every such holder may require a copy of such register or any part thereof on payment of sixpence for every one hundred words required to be copied.

Right of debenture holders to inspect the register of debenture holders and to have copies of trust deed.

(2) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of one shilling or such less sum as may be prescribed by the company for such copy, or, where the trust deed has not been printed, on payment of sixpence for every one hundred words required to be copied.

(3) If inspection is refused, or a copy is refused or not forwarded, the company shall on conviction be liable to a fine² not exceeding five pounds, and to a further fine² not exceeding two pounds for every day during which the refusal continues, and every director, manager, secretary, or other officer of the company

who knowingly authorises or permits such refusal shall incur the like liability.

¹ Cf. Companies Act, 1862, Sect. 33, *ante* p. 14, and Table A (revised), Clause 20, p. 98.

² Recoverable summarily, Sect. 49, *post* p. 285.

Auditors ; Balance Sheet ; and Reports.

Auditors. 19. The following section shall be substituted for section ¹ twenty-three of the Companies Act, 1900 :—

“(1) Every auditor of the company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors.

“(2) The auditors shall make a report to the shareholders on the accounts examined by them, and on every balance sheet laid before the company in general meeting ² during their tenure of office, and the report shall state—

“(a) whether or not they have obtained all the information and explanations they have required ; and

“(b) whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company.

“(3) The balance sheet shall be signed on behalf of the board by two of the directors of the company or, if there is only one director, by that director, and the auditors' report shall be attached to the balance sheet, or there shall be inserted at the foot of the balance sheet a reference to the report, and the report shall be read before the company in general meeting, and shall be open to inspection by any shareholder, ³ who shall be entitled to be furnished with a copy of the balance sheet and auditors' report at a charge not exceeding sixpence for every hundred words.

"(4) A person, other than a retiring auditor, shall not be capable of being appointed auditor ⁴ at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a shareholder to the company not less than fourteen days before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the shareholders, either by advertisement or in any other mode allowed by the articles,⁵ not less than seven days before the annual general meeting: Provided that if, after a notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date fourteen days or less after that notice has been given, the notice, though not given within the time required by this provision, shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this provision, be sent or given at the same time as the notice of the general annual meeting.

"(5) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated, or published, or if any copy of a balance sheet is issued, circulated, or published without either having a copy of the auditors' report attached thereto or containing such reference to that report as is required by this section, the company, and every director, manager, secretary, or other officer of the company who is knowingly a party to the default, shall on conviction be liable to a fine ⁶ not exceeding fifty pounds."

¹ *Ante* p. 235.

² Table A (revised), Clause 107, *ante* p. 118.

³ As to holders of preference shares and debentures, *see* Sect. 23, *post* p. 273.

⁴ Companies Act, 1900, Sect. 21, *ante* p. 234.

⁵ Table A (revised), Clauses 110 to 115, *ante* pp. 119, 120.

⁶ Recoverable summarily, Sect. 49, *post* p. 285.

20. In the case of companies registered in Scotland the summary mentioned in section twenty-six¹ of the

Applica-
tion to
Scotland of
s. 26 of 25
& 26 Vict.
c. 89, and s.
19 of 63 &
64 Vict.
c. 48.

Companies Act, 1862, in addition to the particulars required to be specified by that section and by section nineteen² of the Companies Act, 1900, shall also specify the total amount of debt due from the company in respect of all mortgages and charges, which, if the company had been registered in England, would be required, under this Act, to be filed for registration, or would have been required so to be filed if created after the commencement of this Act.

¹ *Ante* p. 12.

² *Ante* p. 234.

Filing of
annual
statement
of affairs
by limited
companies.

21. Every company required to forward to the registrar a summary under section twenty-six of the Companies Act, 1862,¹ shall include in that summary a statement, made up to such date as may be specified in the statement, in the form of a balance sheet, audited by the company's auditors, and containing a summary of its capital, its liabilities, and its assets, giving such particulars as will disclose the general nature of such liabilities and assets, and how the values of the fixed assets have been arrived at, but the balance sheet need not include a statement of profit and loss: Provided that this section shall not apply to any private company.²

¹ *I.e.*, every company with its capital divided into shares, *ante* p. 12.

² Sect. 37, *post* p. 281.

Report by
directors
under 63
& 64 Vict.
c. 48, s. 12.

22.—(1) The report which the directors are required by section twelve¹ of the Companies Act, 1900, to forward to every member of the company at least seven days before the date on which the statutory meeting of the company is held shall contain an abstract of the receipts of the company on account of its capital, whether from shares or debentures, and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an

account or estimate of the preliminary expenses of the company.

(2) A private ² company shall not be required to forward or to file the report required under section twelve of the Companies Act, 1900.

¹ *Ante* p. 5.

² Sect. 37, *post* p. 281.

23.—(1) Holders of preference shares and debentures of a company shall have the same right ¹ to receive and inspect the balance sheets of the company and the reports of the auditors and other reports as are possessed by the holders of ordinary shares in the company.

Rights of preference share-holders, &c., as to receipt and inspection of reports, &c.

(2) This section shall not apply to a private ² company nor to a company registered before the commencement ³ of this Act.

¹ *Sec* Sect. 19 (3), *ante* p. 270 ; and Table A (revised), Clause 105, *ante* p. 118.

² Sect. 37, *post* p. 281.

³ *I.e.*, before 1st July, 1908, Sect. 52 (3), *post* p. 285.

General Meeting, etc.

24.—(1) The following section shall be substituted for section forty-nine ¹ of the Companies Act, 1862 :—

Annual general meeting.

“A general meeting of every company shall be held once at least in every calendar year,² and not more than fifteen months after the holding of the last preceding general meeting, and, if not so held, the company, and every director, manager, secretary, and other officer of the company who is knowingly a party to the default, shall on conviction be liable to a fine ³ not exceeding fifty pounds.”

(2) When default⁴ has been made in holding a meeting of the company in accordance with the provisions of this section, the court may on the application of any member of the company call or direct the calling of a general meeting of the company.

(3) Any company which is a member of another company may, by minute of the directors, authorise any

of its officials or any other person to act as its representative at any meeting of the latter company, and such representative shall be entitled to exercise the same functions on behalf of the company which he represents as if he had been an individual shareholder.

¹ *Ante* p. 22.

² *Cf.* Table A (revised), Clauses 46 and 49, *ante* pp. 105, 106.

³ Recoverable summarily, Sect. 49, *post* p. 285.

⁴ *Cf.* Companies Act, 1900, Sect. 13, *ante* p. 229; and Table A (revised), Clause 46, *ante* p. 105.

Poll.

25. A poll may be demanded at a meeting of a company at which a special resolution is submitted to be passed or confirmed under section fifty-one ¹ of the Companies Act, 1862, if demanded by three persons for the time being entitled according to the articles of the company to vote,² unless the articles of the company require a demand by such number of such persons, not in any case exceeding five, as may be specified in the articles.³

¹ *Ante* p. 23.

² Table A (revised), Clauses 60 to 66, *ante* pp. 109, 110.

³ *Cf.* Table A (revised), Clause 5, *ante* p. 94.

Winding up.

Amend-
ment of
law as to
voluntary
winding
up, 25 & 26
Vict. c. 89.

26. The liquidator of a company being wound up voluntarily shall, within twenty-one days after his appointment,¹ file with the registrar a notice of his appointment in the prescribed form,² and if any liquidator contravenes this provision he shall on conviction be liable to a fine³ not exceeding five pounds for every day during which the contravention continues.

¹ Companies Act, 1862, Sect. 132 (2), *ante* p. 55, and Sect. 141, *ante* p. 59.

² *I.e.*, by the Board of Trade, Companies Act, 1900, Sect. 30, *ante* p. 238.

³ Recoverable summarily, Sect. 49, *post* p. 285.

Rights of
creditors
in a
voluntary
winding
up.

*** 27.—(1)** Every liquidator appointed by a company

* This Section extends to a voluntary winding up, the similar provisions applicable to a compulsory winding up contained in the Companies (Winding-up) Act, 1890, Sect. 6, *ante* p. 182.

in a voluntary winding up shall, within seven days from his appointment,¹ send notice by post to all persons who appear to him to be creditors of the company that a meeting of the creditors of the company will be held on a date, not being less than fourteen days nor more than twenty-one days after his appointment, and at a place and hour to be specified in the notice, and shall also advertise notice of the meeting once in the "Gazette"² and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the company was situate.

(2) At the meeting to be held in pursuance of the foregoing provisions of this section the creditors shall determine whether an application shall be made to the court³ for the appointment of any person as liquidator in the place of or jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection,⁴ and, if the creditors so resolve, an application may be made accordingly to the court at any time, not later than fourteen days after the date of the meeting, by any creditor appointed for the purpose at the meeting.

(3)⁵ On any such application the court may make an order either for the removal of the liquidator appointed by the company and for the appointment of some other person as liquidator or for the appointment of some other person to act as liquidator jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection either together with or without any such appointment of a liquidator, or such other order as, having regard to the interests of the creditors and contributories of the company, may seem just, and no appeal shall lie from an order of the court upon such application.

(4) The court shall make such order as to the costs of such application as it may think fit, and, if the court should be of opinion that, having regard to the interests of the creditors in the liquidation, there were reasonable grounds for the application, the court may order the costs of such application to be paid out of the assets⁶ of the com-

pany notwithstanding that such application is dismissed or otherwise disposed of adversely to the applicant.

(5) The expression "Gazette" in this section means in the case of a company registered in England the London Gazette, in the case of a company registered in Scotland the Edinburgh Gazette, and in the case of a company registered in Ireland the Dublin Gazette.

¹ Companies Act, 1862, Sect. 132 (2), *ante* p. 55.

² Defined in Subsect. 5, *infra*.

³ Any individual creditors may also apply to the court under Companies Act, 1862, Sect. 138, *ante* p. 58; extended by Companies Act, 1900, Sect. 25, *ante* p. 236.

⁴ See Companies (Winding-up) Act, 1890, Sect. 9, *ante* p. 185.

⁵ Cf. Companies Act, 1862, Sect. 141, *ante* p. 59.

⁶ See winding-up rule 170, *post* Appendix.

Reckoning
of contin-
gent lia-
bilities on
petition to
wind up.

28. In determining whether a company is unable to pay its debts within the meaning of section eighty of the Companies Act, 1862,¹ the court shall take into account the contingent and prospective liabilities of the company, and any contingent or prospective creditor shall be a creditor entitled to present a petition for winding up the company under section eighty-two of that Act:² Provided that the court shall not give a hearing to a petition for winding up the company by such a creditor until such security for costs has been given as the court thinks reasonable, and until a *prima facie* case for winding up has been established to the satisfaction of the court.

¹ *Ante* p. 34.

² *Ante* p. 36.

Winding-
up order
where com-
pany has
no assets.

29. An order to wind up a company¹ shall not be refused on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

¹ Companies Act, 1862, Sect. 86, *ante* p. 37.

30. In the Preferential Payments in Bankruptcy

Act, 1888,¹ and the Preferential Payments in Bankruptcy Amendment of 51 (Ireland) Act, 1889, the date on which the order to wind up was made shall, in the case of a company ordered to be wound up compulsorily, be substituted for the date² of the commencement of the winding up of the company: 62, and 52 & 53 Vict. c. 60.

Provided that this provision shall not apply where the order is made with respect to a company which before the date of the order had commenced³ to be wound up voluntarily.

¹ Set out in Appendix.

² *I.e.*, the date of the presentation of the petition to wind up, Companies Act, 1862, Sect. 84, *ante* p. 37.

³ *I.e.*, had passed resolution authorising such winding up, Companies Act, 1862, Sect. 130, *ante* p. 54.

31.—(1) Where a company has been wound up voluntarily and the return made by the liquidators to the registrar under section one hundred and forty-three¹ of the Companies Act, 1862, has been registered in accordance with that section, the court may, on the application of the liquidators or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as to the court seems fit. Dissolu-
tion of
companies.

(2) Where a company has been dissolved, the court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidators of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(3) It shall be the duty of the person on whose application any such order was made, within seven days after the making of the order, to file with the registrar an office copy of the order, and if such person fails to do so he shall be liable on conviction to a fine² not ex-

ceeding five pounds for every day during which the default continues.

¹ *Ante* p. 60; amended by Third Schedule hereof, *post* p. 290; *see* also winding-up rule 171 (b), Appendix.

² Recoverable summarily, Sect. 49, *post* p. 285.

Directors.

Power of
court to
grant relief
in certain
cases.

32. If in any proceeding against a director of a company for negligence or breach of trust it appears to a court that the director is or may be liable ¹ in respect of the negligence or breach of trust, but has acted honestly and reasonably, and ought fairly to be excused for the negligence or breach of trust, the court may relieve ² him, either wholly or partly, from his liability on such terms as the court may think proper.

¹ *See* in Index under "Liability of Directors".

² *See* also powers of court to relieve under Companies Act, 1898, Sect. 1 (1), *ante* p. 214; and Companies Act, 1900, Sect. 15, *ante* p. 232.

Contribu-
tions under
53 & 54
Vict. c. 64.

33. A person liable to make any payment under the provisions of the Directors' Liability Act, 1890,¹ shall not be entitled to recover contribution from another person under section ² five of that Act if the person liable to make the payment was, and such other person was not, guilty of fraudulent misrepresentation.

¹ Sects. 3 and 4 thereof, *ante* pp. 190-192.

² *Ante* p. 193.

Qualifica-
tion of
director.

34. The following provision shall be substituted for subsection (3) of section three of the Companies Act, 1900 :—¹

"(3) If after the expiration of the said period or shorter time any unqualified person acts as a director of the company he shall be liable on conviction to a fine ² not exceeding five pounds for every day between the expiration of the said period or shorter time and the last day on which it is proved that he acted as a director."

¹ *Ante* p. 218.

² Recoverable summarily, Sect. 49, *post* p. 285.

Requirements as to Companies established outside the United Kingdom.

35.—(1) Every company ¹ incorporated outside the United Kingdom which at the commencement ² of this Act has a place of business ³ in the United Kingdom, and every such company which after the commencement ² of this Act establishes such a place of business ³ within the United Kingdom, shall within three months from the commencement ² of this Act or within one month from the establishment of such place of business, ³ as the case may be, file with the registrar ⁴—

Require-
ments as to
companies
established
outside the
United
Kingdom.

- (a) a certified ⁵ copy of the charter, statutes, or memorandum and articles of association, of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified ⁵ translation thereof;
- (b) a list of the directors of the company;
- (c) the names and addresses of some one or more persons resident in the United Kingdom authorised to accept on behalf of the company service of process and any notices required to be served on the company;

and, in the event of any alteration being made in any such instrument or in the directors or in the names or addresses of any such persons as aforesaid, the company shall file with the registrar a notice of the alteration within such time as may be prescribed.

(2) Any process or notice required to be served on the company shall be sufficiently served if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been so filed.

(3) Every company to which this section applies shall in every year file with the registrar such a statement of its affairs as would, if it were a company incorporated in the United Kingdom and having a capital divided into shares, be required under this Act ⁶ to be included in the annual summary.⁷

(4) Every company to which this section applies, and

which uses the word "Limited" as part of its name shall—

- (a) in every prospectus inviting subscriptions for its shares or debentures in the United Kingdom state the country in which the company is incorporated; and
 - (b) ⁸ conspicuously exhibit on every place where it carries on business in the United Kingdom the name of the company and the country in which the company is incorporated; and
 - (c) ⁸ have the name of the company and of the country in which the company is incorporated mentioned in legible characters in all bill-heads and letter paper, and in all notices, advertisements, and other official publications of the company.
- (5) If any company to which this section applies fails to comply with any of the requirements of this section the company, and every officer or agent of the company, shall on conviction be liable to a fine ⁹ not exceeding fifty pounds, or, in the case of a continuing offence, five pounds for every day during which the failure continues.
- (6) For the purposes of this section the expression "certified" means certified in the prescribed ¹⁰ manner to be a true copy or a correct translation, and a share transfer or share registration office shall be deemed to be a place of business within the meaning of this section.
- (7) There shall be paid to the registrar for registering any document required by this section to be filed with him a fee of five shillings or such smaller fee as may be prescribed.

¹ Companies Act, 1862, Sect. 18, *ante* p. 8.

² *I.e.*, after 30th June, 1908.

³ Including an office for the transfer or registration of shares, Subsect. 6, *infra*.

⁴ Companies Act, 1862, Sect. 174, *ante* p. 71.

⁵ Defined in Subsect. 6, *infra*.

⁶ *I.e.*, by Sect. 21, *ante* p. 272.

⁷ Companies Act, 1862, Sect. 26, *ante* p. 12.

⁸ For similar provisions in case of British companies, *see* Companies Act, 1862, Sect. 41, *ante* p. 19.

⁹ Recoverable summarily, Sect. 49, *post* p. 285.

¹⁰ *I.e.*, by the Board of Trade, whose requirements are set out in the Appendix, *post* p. 292.

Miscellaneous.

36. Notwithstanding anything contained in the statute of the Scots Parliament of 1696, chapter twenty-five, debentures to bearer issued in Scotland are declared to be valid and binding according to their terms. Validity of debentures to bearer in Scotland.

37.—(1) For the purposes of this Act the expression “private company” means a company which by its articles— Definition of private company.

- (a) restricts the right to transfer its shares; and
- (b) limits the number of its members (exclusive of persons who are in the employment of the company) to fifty; and
- (c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.¹

(2) A private company may, subject to anything contained in the memorandum or articles of association of the company, by passing a special resolution² and by filing with the registrar such a statement in lieu of prospectus as the company, if a public company, would under the provisions of this Act³ have had to file before allotting any of its shares or debentures, together with such a statutory declaration as the company, if a public company, would under the provisions of section six of the Companies Act, 1900,⁴ have had to file before commencing business, turn itself into a public company.

(3) Where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this section, be treated as a single member.

(4) Wherever in the Companies Acts a minimum of seven members is required⁵ only two members shall be required in the case of a private company.

¹ But private companies are by Sect. 1 (5) of this Act (*ante* p. 252) excepted from the restrictions imposed by that Section, and Sects. 2, 6 and 11 of the Companies Act, 1900, on public companies which do not offer shares for public subscription.

² Companies Act, 1862, Sect. 51, *ante* p. 23.

³ Sect. 1, *ante* p. 251.

⁴ *Ante* p. 220.

⁵ *I.e.*, in Companies Act, 1862, Sects. 6 (*ante* p. 2), 48 (*ante* p. 22) and 79 (*ante* p. 34); and Companies Act, 1867, Sect. 40 (*ante* p. 143).

Applica-
tion of 33
& 34 Vict.
s. 104 to
companies
not being
wound up.

38. The Joint Stock Companies Arrangement Act, 1870,¹ shall apply to a company which is not in the course of being wound up, in like manner as it applies to a company which is in the course of being wound up, as if in that Act references to the court having jurisdiction to wind up the company were substituted for references to the court, and references to the liquidator were omitted therefrom, and references to the company were substituted for references to contributories of the company.

¹ *Ante* p. 159.

Re-organi-
sation of
capital.

39.—(1) A company may by special resolution confirmed¹ by an order of the court² modify the conditions contained in its memorandum of association³ so as to re-organise its capital, whether by the consolidation of shares of different classes, or by the division of its shares into shares of different classes: Provided always that no preference or special privilege attached to or belonging to any class of shares shall be interfered with except by a resolution passed by a majority of shareholders of that class representing three-fourths of the capital of that class and confirmed in the same manner as a special resolution of the company is required to be confirmed,¹ and every resolution so passed shall bind all shareholders of such class.

(2) Where an order is made under this section an office copy thereof shall be filed with the registrar within seven days after the making of the order, and the resolution shall not take effect until such a copy has been so filed.

¹ Companies Act, 1862, Sect. 51, *ante* p. 23.

² *I.e.*, the court having jurisdiction to wind up the company, Sect. 52 (2), *post* p. 285.

³ *Cf.* the Companies (Memorandum of Association) Act, 1890, *ante* p. 175.

40. Section forty-four of the Companies Act, 1862,¹ shall not apply to any life assurance company nor any other assurance company to which the pro-

visions of the Life Assurance Companies Acts, 1870 to 1872, as to the annual statements to be made by such companies apply,² with or without modification, if the company complies with those provisions.³

Exemption
of life
assurance
companies
from 25 &
26 Vict. c.
89, s. 44;
33 & 34
Vict. c. 61.

¹ *Ante* p. 20.

² *I.e.*, any person or body, not registered under the Friendly Societies Acts, who, within the United Kingdom, issue, or are liable under, life assurance policies, or grant annuities upon life. Life Assurance Companies Act, 1870, Sect. 2.

³ *I.e.*, Sects. 5 to 11 of Life Assurance Companies Act, 1870.

41. Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument, and who has taken possession, shall, on ceasing to act as such, and also once in every half-year while he remains in possession, file with the registrar an abstract in the prescribed form of his receipts and payments¹ during the period to which the abstract relates, and shall also on ceasing to act as such receiver or manager file with the registrar notice to that effect, which notice shall be entered by the registrar on the register of mortgages and charges, and every such receiver or manager who makes default in complying with the provisions of this section within the prescribed time shall be liable to a fine² not exceeding fifty pounds.

Filing of
accounts of
receivers
and
managers.

¹ *See* Rules of the Supreme Court, Order 50; Rules 18 to 22 and Appendix L, Form 14, with regard to receiver's accounts.

² Recoverable summarily, Sect. 49, *post* p. 285.

42. A licence granted by the Board of Trade under section twenty-three¹ of the Companies Act, 1867 (which relates to associations formed for the purposes not of gain), may at any time be revoked by the Board of Trade, and upon revocation the registrar shall enter the word "Limited" at the end of the name of the company upon the register, and the company shall cease to enjoy the exemptions and privileges granted by that section. Before any such licence is revoked under this section the Board of Trade shall give notice in writing of their intention to the company, and shall afford the

Revocation
of licences
under 30 &
31 Vict. c.
131, s. 23.

company an opportunity of being heard in opposition to such revocation.

¹ *Ante* p. 137.

Interpreta-
tion of
46 & 47
Vict. c. 30.

43. For removing doubts it is hereby declared that the Commonwealth of Australia is a colony within the meaning of the Companies (Colonial Registers) Act, 1883.¹

¹ *Ante* p. 172.

Construc-
tion of s. 56
of 25 & 26
Vict. c. 30.

44. Section fifty-six, subsection (2),¹ of the Companies Act, 1862, shall be read and construed as if the words therein "one-fifth part" had been "one-tenth part".

¹ *Ante* p. 25.

Extraordi-
nary reso-
lutions.

45. An extraordinary resolution for the purposes of the Companies Act, 1862,¹ and this Act, means a resolution which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution, and section fifty-three of the Companies Act, 1862,² shall apply in the case of an extraordinary resolution in like manner as that section applies in the case of a special resolution, with the substitution of a reference to the date of the passing of the extraordinary resolution for the reference to the date of the confirmation of the special resolution.

¹ *I.e.*, Sects. 129 (*ante* p. 54), 136 (*ante* p. 57), 139 (*ante* p. 58), 159, 160 (*ante* pp. 64, 65); and Table A (revised), Clauses 4, 41 and 86, *ante* pp. 94, 104 and 115.

² *Ante* p. 24.

Signature
of docu-
ments.

46. Any writing or licence¹ which under the Companies Acts, 1862 to 1900, is required to be under the hand of one of the principal secretaries or assistant secretaries of the Board of Trade may be under the hand of any person authorised in that behalf by the President of the Board of Trade.

¹ Companies Act, 1862, Sect. 21, *ante* p. 10; Companies Act, 1867, Sect. 23, *ante* p. 137.

47. The Board of Trade shall cause a general annual report of matters within the Companies Acts, 1862 to 1900, and this Act to be prepared and laid before both Houses of Parliament. Annual report by Board of Trade.

48. If any person or persons trade or carry on business under any name or title of which "Limited" is the last word, such person or persons shall, unless duly incorporated¹ with limited liability, be liable to a penalty² not exceeding five pounds for every day upon which such name or title has been used. Penalty for improper use of word "Limited".

¹ Companies Act, 1862, Sect. 18, *ante* p. 8.

² Recoverable summarily, next Section, *infra*.

49. All offences under the Companies Acts made punishable by any penalty may be prosecuted under the Summary Jurisdiction Acts. Prosecution of offences under Companies Acts.

50. The amendments specified in the Third Schedule¹ to this Act, which relate to minor details, shall be made in the Companies Acts. Miscellaneous amendments of Companies Acts.

¹ *Post* p. 290.

51. The enactments mentioned in the Fourth Schedule¹ to this Act are hereby repealed to the extent specified in the third column of that schedule. Repeal.

¹ *Post* p. 291.

52.—(1) This Act may be cited as the Companies Act, 1907, and the Companies Acts, 1862 to 1900, and this Act may be cited together as the Companies Acts, 1862 to 1907, and are in this Act referred to as the Companies Acts, and this Act shall for all purposes (including its application to Scotland) have effect as part of the Companies Act, 1900.¹ Short title, construction, and commencement.

(2) In this Act the expression "the court" when used in relation to a company shall, unless the context otherwise requires, mean the court² having jurisdiction under the Companies Acts, 1862 to 1900, to wind up the company.

(3) The provisions³ of this Act relating to perpetual

debentures and the power of a company to re-issue redeemed debentures in certain cases, shall come into operation on the passing⁴ of this Act, and the other provisions of this Act shall come into operation on the first day of July one thousand nine hundred and eight.

¹ See particularly the definition section (Sect. 30) thereof, *ante* pp. 224, 225.

² Companies (Winding-up) Act, 1890, Sect. 1, *ante* p. 164.

³ Sects. 14 and 15, *ante* p. 267.

⁴ *I.e.*, 28th August, 1907.

SCHEDULES.

FIRST SCHEDULE.

tion 1.

THE COMPANIES ACTS, 1862 TO 19 .

STATEMENT IN LIEU OF PROSPECTUS.

filed by

pursuant to section of the Companies Act, 1907.

LIMITED

Presented for filing by

THE COMPANIES ACTS, 1862 TO 19 .

LIMITED.

STATEMENT IN LIEU OF PROSPECTUS.

The nominal capital of the company	£	
Divided into	Shares of £ each.	
	" " "	
	" " "	
Names, descriptions, and addresses of directors or proposed directors.		
Minimum subscription (if any) fixed by the memorandum or articles of association on which the company may proceed to allotment.		
Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.	1. shares of £ fully paid.	
The consideration for the intended issue of such shares and debentures.	2. shares upon which £ per share credited as paid.	
	3. debentures £	
	4. Consideration.	
Names and addresses of (a) vendors of property purchased or acquired, or proposed to be (b) purchased or acquired by the company.		(a) For definition of vendor, see Section 10 (2) of the Companies Act, 1900, as amended by this Act.
Amount (in cash, shares, or debentures) payable to each separate vendor.		(b) See Section 10 (3) of the Companies Act, 1900.
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.	Total purchase price £	
	Cash . . . £	
	Shares . . . £	
	Debentures . . £	
	Goodwill . . . £	
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company, or	Amount paid.	
Rate of such commission . . .	" payable.	
	Rate per cent.	

Estimated amount of preliminary expenses	£
Amount paid or intended to be paid to any promoter. Consideration for such payment.	Name of promoter. Amount £ Consideration :—
Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the filing of this statement).	
Time and place at which such contracts or copies thereof may be inspected.	
Names and addresses of the auditors of the company (if any).	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.	

Whether the articles contain any provisions precluding holders of shares or debentures receiving and inspecting balance sheets or reports of the auditors or other reports.	Nature of the provisions.
---	---------------------------

We *A.B.*, &c. secretary of the company, and *C.B.*, (A Director [or Solicitor]) of the company hereby solemnly and sincerely declare that the statements above contained are true to the best of our knowledge, information, and belief, and we make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1885.

SECOND SCHEDULE.

Section 1.

MODIFICATIONS OF SECTIONS 2, 6 AND 11.

References to a verified statement in lieu of prospectus and the filing thereof shall be substituted for references to a prospectus and the publication of a prospectus.

In section six the reference to shares offered for public subscription shall be construed as a reference to shares payable in cash.

There shall be added to subsection (1) of section six the following paragraph:—

“(d) There has been filed with the registrar a statement in lieu of prospectus.”

The registrar shall not give such a certificate as is mentioned in subsection (2) of section six unless a statement in lieu of prospectus has been filed with him.

Section 50.

THIRD SCHEDULE.

MISCELLANEOUS AMENDMENTS OF COMPANIES ACTS.

Enactment to be amended.	Nature of Amendment.
Companies Act, 1862 (25 & 26 Vict. c. 89), s. 28.	After the word "stock" there shall be inserted the words "or re-converted stock into shares". After the word "conversion" there shall be inserted the words "or re-conversion". After the word "converted" there shall be inserted the words "or the stock re-converted".
s. 32	After the words "hereinbefore mentioned" there shall be inserted the words "or any part thereof". After the word "sixpence" there shall be inserted the words "or such less sum as the company may prescribe". After the words "hundred words" there shall be inserted the words "or fractional part thereof".
s. 143	At the beginning there shall be inserted the words "Within one week after such meeting". After the words "the same was held" there shall be inserted the words "The registrar on receiving such return shall forthwith register it".
Companies Act, 1867 (30 & 31 Vict. c. 131), s. 16.	After the word "paid" there shall be inserted the words "or (as the case may be) the reduced amount, if any, which is to be deemed to have been paid".
Companies Act, 1879 (42 & 43 Vict. c. 76), s. 5.	For the words "in cases where no such increase of nominal capital may be resolved upon" there shall be substituted the words "either in conjunction with or without any such increase of nominal capital".
s. 7.	The whole section except the proviso to subsection (5) to be repealed.

FOURTH SCHEDULE.

Section 51.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
25 & 26 Vict. c. 89.	The Companies Act, 1862.	Section forty-nine. In section fifty-one, the words "by at least five members". Section sixty-five. Section one hundred and twenty-nine, from "For the purposes of this Act," to the end of the section.
53 & 54 Vict. c. 63.	The Companies (Winding-up) Act, 1890.	Subsection (2) of section twenty-nine.
63 & 64 Vict. c. 48.	The Companies Act, 1900.	In subsection (3) of section two, the words "or to a company which does not issue any invitation to the public to subscribe for its shares". In section three, subsection (3). In section six, subsection (4) and subsection (7) except so far as relates to companies registered before the commencement of this Act. In section ten, subsection (1) and proviso (b) to subsection (4). In subsection (2) of section twelve, paragraph (c). Section fourteen. Section twenty three.

APPENDIX.

THE COMPANIES ACTS, 1862-1907.

In regard to certified copies and certified translations of documents required by section 35 of the Companies Act, 1907, to be filed with the registrar, the Board of Trade do hereby prescribe as in manner following, that is to say :—

1. A certified copy of the Charter, Statutes, or Memorandum and Articles of Association, or other Instrument constituting or defining the constitution of a company in the case of a company incorporated in a foreign country required to be filed with the registrar under section 35 of the Companies Act, 1907, shall be deemed to be certified as a true copy if in such foreign country it is—

- (a) duly certified as a true copy by an official of the Government to whose custody the original is committed, the signature or seal of such official being authenticated by any of the British officials mentioned in section 6 of the Commissioners of Oaths Act, 1889, or in any Act amending the same, or
- (b) duly certified as a true copy by a Notary of such foreign country, the certificate of the Notary being authenticated by any of the British officials mentioned in section 6 of the said Act or in any Act amending the same, or
- (c) duly certified as a true copy on oath by some officer of the company before a person having authority to administer an oath as provided by section 3 of the said Act, the status of the person administering the oath being authenticated by any of the British officials mentioned in section 6 of the said Act, or in any Act amending the same.

2. A certified copy of the Charter, Statutes, or Memorandum and Articles of Association, or other Instrument constituting or defining the constitution of a company, in the case of a company incorporated in the Channel Islands, Isle of Man, or in any Colony, Island, Plantation, or place under the Dominion of His Majesty in foreign parts, required to be filed with the registrar under section 35 aforesaid, shall be deemed to be certified as a true copy if in the Channel Islands, Colony, Island, Plantation, or places under the Dominion of His Majesty, it is

- (a) duly certified as a true copy by an official of the Government to whose custody the original is committed ;
 - (b) duly certified as a true copy by a Notary Public of such Colonies, Islands, or places aforesaid ;
 - (c) duly certified as a true copy on oath by some officer of the company before some person having authority to administer an oath as provided by section 3 of the Commissioners of Oaths Act, 1889.
3. In the case of a company in which the Charter, Statutes, or Memorandum and Articles of Association, or other Instrument constituting or defining the constitution of the company is not written in the English language a certified translation thereof required to be filed with the registrar shall be deemed to be certified as a correct translation if certified to be a correct translation
- (a) when such translation is made out of the United Kingdom by
 - (1) an official having custody of the original, or
 - (2) a Notary Public of the country or place where the company is incorporated, the signature or seal of the person so certifying where the company is incorporated in a foreign country being authenticated in either case by any of the British officials mentioned in section 6 of the Commissioners of Oaths Act, 1889, or in any Act amending the same ;
 - (b) where such translation is made within the United Kingdom:
 - (1) In the case of a translation made in regard to a company whose place of business is established in England, by
 - (i) a Notary Public in England, or
 - (ii) a Solicitor of the Supreme Court in England.
 - (2) In the case of a translation made in regard to a company whose place of business is established in Ireland by
 - (i) a Notary Public in Ireland, or
 - (ii) a Solicitor of the Supreme Court in Ireland.
 - (3) In the case of a translation made in regard to a company whose place of business is established in Scotland by
 - (i) a Notary Public in Scotland,
 - (ii) a Writer to the Signet or a Solicitor of the Supreme Court in Scotland.
4. The Board of Trade may in any particular case, if they think fit to do so and upon such conditions as they think fit, permit certified copies or translations though not certified in accordance with the above requirements to be filed with the registrar.

H. LLEWELLYNN SMITH.

BOARD OF TRADE,
18th day of February, 1908.

THE LARCENY ACT, 1861 (24 & 25 VICT. CAP. 96).

82. Whosoever, being a director, public officer, or manager of any body corporate or public company, shall as such receive or possess himself of any of the property of such body corporate or public company otherwise than in payment of a just debt or demand, and shall, with intent to defraud, omit to make or to cause or direct to be made a full and true entry thereof in the books and accounts of such body corporate or public company, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the court, to any of the punishments which the court may award as hereinbefore last mentioned.

Directors, &c., of any body corporate or public company fraudulently appropriating property; or keeping fraudulent accounts;

83. Whosoever, being a director, manager, public officer, or member of any body corporate or public company, shall, with intent to defraud, destroy, alter, mutilate, or falsify any book, paper, writing, or valuable security belonging to the body corporate or public company, or make or concur in the making of any false entry, or omit or concur in omitting any material particular, in any book of account or other document, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the court, to any of the punishments which the court may award, as hereinbefore last mentioned.

or wilfully destroying books, &c.;

84. Whosoever, being a director, manager, or public officer of any body corporate or public company, shall make, circulate, or publish, or concur in making, circulating, or publishing, any written statement or account which he shall know to be false in any material particular, with intent to deceive or defraud any member, shareholder, or creditor of such body corporate or public company, or with intent to induce any person to become a shareholder or partner therein, or to intrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof shall be guilty of a misdemeanour, and being convicted thereof, shall be liable, at the discretion of the court, to any of the punishments which the court may award, as hereinbefore last mentioned.

or publishing fraudulent statements.

THE BILLS OF SALE ACT, 1878 (41 & 42 VICT. CAP. 31).

4. In this Act the following words and expressions shall have the meanings in this section assigned to them respectively, unless there be something in the subject or context repugnant to such construction; (that is to say.)

Interpretation of terms.

The expression "bill of sale" shall include bills of sale, assignments, transfers, declarations of trust without transfer, inventories of goods with receipt thereto attached, or

receipts for purchase moneys of goods, and other assurances of personal chattels, and also powers of attorney, authorities, or licenses to take possession of personal chattels as security for any debt, and also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, shall be conferred, but shall not include the following documents; that is to say, assignments for the benefit of the creditors of the person making or giving the same, marriage settlements, transfers or assignments of any ship or vessel or any share thereof, transfers of goods in the ordinary course of business of any trade or calling, bills of sale of goods in foreign parts or at sea, bills of lading, India warrants, warehousekeepers' certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented:

The expression "personal chattels" shall mean goods, furniture, and other articles capable of complete transfer by delivery, and (when separately assigned or charged) fixtures and growing crops, but shall not include chattel interests in real estate, nor fixtures (except trade machinery as hereinafter defined), when assigned together with a freehold or leasehold interest in any land or building to which they are affixed, nor growing crops when assigned together with any interest in the land on which they grow, nor shares or interest in the stock, funds, or securities of any government, or in the capital or property of incorporated or joint stock companies, nor choses in action, nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement or of the custom of the country ought not to be removed from any farm where the same are at the time of making or giving of such bill of sale:

Personal chattels shall be deemed to be in the "apparent possession" of the person making or giving a bill of sale, so long as they remain or are in or upon any house, mill, warehouse, building, works, yard, land, or other premises occupied by him, or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person:

"Prescribed" means prescribed by rules made under the provisions of this Act.

THE PREFERENTIAL PAYMENTS IN BANKRUPTCY
ACT, 1888 (51 & 52 VICT. CAP. 62).

1.—(1) In the distribution of the property of a bankrupt, and in the distribution of the assets of any company being wound up under the Companies Act, 1862, and the Acts amending the same, there shall be paid in priority to all other debts¹—

- (a) All parochial or other local rates due from the bankrupt or the company at the date of the receiving order or, as the case may be, the commencement² of the winding up, and having become due and payable within twelve months next before that time,³ and all assessed taxes, land tax, property or income tax assessed on the bankrupt or the company up to the fifth day of April next before the date of the receiving order, or, as the case may be, the commencement² of the winding up, and not exceeding in the whole one year's assessment;
- (b) All wages or salary of any clerk or servant in respect of services rendered to the bankrupt or the company during four months before the date of the receiving order, or, as the case may be, the commencement² of the winding up, not exceeding fifty pounds; and
- (c) All wages⁴ of any labourer or workman not exceeding twenty-five pounds, whether payable for time or for piece work, in respect of services rendered to the bankrupt or the company during two months before the date of receiving order⁵ or, as the case may be, the commencement² of the winding up: Provided that where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the date of the receiving order, or, as the case may be, the commencement² of the winding up.

(2) The foregoing debts shall rank equally between themselves and shall be paid in full, unless the property of the bankrupt is, or the assets of the company are, insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the cost of administration or otherwise, the foregoing debts shall be discharged forthwith so far as the property of the debtor, or the assets of the company, as the case may be, is or are sufficient to meet them.

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of a bankrupt or a company being wound up within three months next before the date of the receiving order³ or the winding-up order respectively, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof.

Provided, that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom such payment is made.

(5) This section, so far as it relates to the property of a bankrupt, shall have effect as part of section forty of the Bankruptcy Act, 1883.

(6) This section shall apply, in the case of a deceased person who dies insolvent, as if he were a bankrupt, and as if the date of his death were substituted for the date of the receiving order.

¹Including floating charges to secure debentures. Preferential Payments in Bankruptcy Amendment Act, 1897, Sect. 2, *post* p. 300.

²Where winding up is voluntary, *see* Companies Act, 1862, Sect. 130, *ante* p. 54; where compulsory, Companies Act, 1907, Sect. 80, *ante* p. 276.

³Or, where a receiver has been appointed or possession taken, on behalf of debenture holders secured by a floating charge, the time runs from such appointment or taking of possession. Preferential Payments in Bankruptcy Amendment Act, 1897, Sect. 3, *post* p. 300.

⁴Extended to sum payable to workmen for compensation for accident. Workmen's Compensation Act, 1906, Sect. 5, set out in Appendix, *post*.

wings.

2.—(1) Nothing in this Act shall alter the effect of section five of the Act twenty-eight and twenty-nine Victoria, chapter eighty-six, "To amend the law of partnership," or shall prejudice the provisions of the Friendly Societies Act, 1875, or shall affect the priority given to the payment of funeral and testamentary expenses by section one hundred and twenty-five of the Bankruptcy Act, 1883.

& 51
let. c. 43.
pplica-
on of Act.

(2) Nothing in this Act shall affect the provisions of the Stannaries Act, 1887.

3. This Act shall apply only in the case of receiving orders and orders for the administration of the estates of deceased debtors according to the law of bankruptcy made and windings up commenced after the commencement¹ of this Act.

¹*I.e.*, on 1st January, 1889, Sect. 5, *infra*.

4. This Act shall not apply to Ireland.

Extent
of Act.

5. This Act shall commence and come into operation from and immediately after the last day of December, one thousand eight hundred and eighty-eight.

Com-
mence-
ment of
Act.

6. The enactments specified in the schedule hereto are hereby repealed to the extent in the third column of that schedule mentioned.

Repeal.

7. This Act may be cited as the Preferential Payments in Short title. Bankruptcy Act, 1888.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Title.	Extent of Repeal.
46 & 47 Vict. c. 28 .	The Companies Act, 1883.	The whole Act, except as regards its application to Ireland.
46 & 47 Vict. c. 52 .	The Bankruptcy Act, 1883.	Section forty, subsections one and two.
49 & 50 Vict. c. 28 .	The Bankruptcy (Agricultural Labourers' Wages) Act, 1883.	The whole Act.

THE INTERPRETATION ACT, 1889 (52 & 53 VICT. CAP. 63).

38.—(1) Where this Act or any Act passed after the com- Effect of
mencement of this Act repeals and re-enacts, with or without repeal in
modification, any provisions of a former Act, references in any future
other Act to the provisions so repealed, shall, unless the contrary Acts.

intention appears, be construed as references to the provisions so re-enacted.

(2) Where this Act or any Act passed after the commencement of this Act repeals any other enactment, then, unless the contrary intention appears, the repeal shall not—

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
 - (b) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or
 - (c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or
 - (d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or
 - (e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;
- and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the repealing Act had not been passed.

THE PREFERENTIAL PAYMENTS IN BANKRUPTCY AMENDMENT ACT, 1897 (60 & 61 VICT. CAP. 19).

Short title. 1. This Act may be cited as the Preferential Payments in Bankruptcy Amendment Act, 1897.

Priority of certain debts: 2. In the winding up of any company under the Companies Act, 1862, and the Acts amending the same, the debts mentioned in section one of the Preferential Payments in Bankruptcy Act, 1888, shall, so far as the assets of the company available for payment of general creditors may be insufficient to meet them, have priority over the claims of holders of debentures or debenture stock under any floating charge¹ created by such company, and shall be paid accordingly out of any property comprised in or subject to such charge.

¹ See Companies Act, 1907, Sect. 10 (1 (f)), *ante* p. 210, and Sect. 13, *ante* p. 215.

Payment of debts out of assets in certain cases. 3. In case a receiver is appointed on behalf of the holders of any debentures or debenture stock of a company secured by a floating¹ charge, or in case possession is taken by or on behalf of such debenture holders of any property comprised in or subject to such charge, then and in either of such cases, if the company

is not at the time in course of being wound up, the debts mentioned in section one of the said Preferential Payments Act shall be paid forthwith out of any assets coming to the hands of the receiver, or other person taking possession as aforesaid, in priority to any claim for principal or interest in respect of such debentures or debenture stock. And the periods of time mentioned in the said Act shall be reckoned from the date of the appointment of the receiver or possession being taken as aforesaid, as the case may be. But any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

¹ See Companies Act, 1907, Sect. 10 (1 (f)), *ante* p. 210, and Sect. 13, *ante* p. 215.

4. In the application to Ireland of this Act the Preferential Payments in Bankruptcy (Ireland) Act, 1889, shall be substituted for the Preferential Payments in Bankruptcy Act, 1888, and in particular section four of the said Act of 1889 shall be substituted for section one of the said Act of 1888.

Application to Ireland:
52 & 53
Vict. c. 60;
51 & 52
Vict. c. 62.
Extent of Act.

5. This Act shall not extend to Scotland.

THE WORKMEN'S COMPENSATION ACT, 1906 (6 EDW. 7, CAP. 58).

5.—(1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then, in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in the enactments relating to bankruptcy and the winding up of companies, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so however that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

(2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the bankruptcy or liquidation.

(3) There shall be included among the debts which under section¹ 1 of the Preferential Payments in Bankruptcy Act, 1888, and section 4 of the Preferential Payments in Bankruptcy (Ireland) Act, 1889, are in the distribution of the property of a bankrupt and in the distribution of the assets of

a company being wound up to be paid in priority to all other debts, the amount, not exceeding in any individual case one hundred pounds, due in respect of any compensation the liability whereof accrued before the date of receiving order or the date² of the commencement of the winding up, and those Acts and the Preferential Payments in Bankruptcy Amendment Act, 1897,³ shall have effect accordingly. Where the compensation is a weekly payment, the amount due in respect thereof shall, for the purposes of this provision, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the First Schedule to this Act.

50 & 51
Vict. c. 43. (4) In the case of the winding up of a company within the meaning of the Stannaries Act, 1887, such an amount as aforesaid, if the compensation is payable to a minor or the dependants of a minor, shall have the like priority as is conferred on wages of minors by section 9 of that Act, and that section shall have effect accordingly.

(5) The provisions of this section with respect to preferences and priorities shall not apply where the bankrupt or the company being wound up has entered into such a contract with insurers as aforesaid.

(6) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction⁴ or of amalgamation with another company.

¹ *Ante* p. 297.

² Where winding up is voluntary, *see* Companies Act, 1862, Sect. 130, *ante* p. 54; where compulsory, Companies Act, 1907, Sect. 30, *post* p. 277.

³ *Ante* p. 300.

⁴ Companies Act, 1862, Sect. 161, *ante* p. 65.

COMPANIES (WINDING UP).

GENERAL RULES MADE PURSUANT TO THE COMPANIES (WINDING-UP) ACT, 1890, AND THE JUDICATURE ACT, 1881.

Preliminary.

Applica-
tion of
rules.

1. Subject to the limitation hereinafter mentioned these rules shall apply to the proceedings in every winding up under the Acts of a company, which shall commence on and after the date on which these rules come into operation, and they shall also, so far as practicable, and subject to any general or special order of the court, apply to all proceedings which shall be taken or instituted after the said date, in the winding up of a company which commenced on or after the first day of January, 1891.

rules which from their nature and subject-matter are, or which by the head-lines above the group in which they are contained or by their terms are made applicable only to the proceedings in a winding up by the court, shall not apply to the proceedings in a voluntary winding up, or winding up under the supervision of the court.

2. In these rules, unless the context or subject-matter otherwise requires—

Inter-
pretation of
terms.

"The Acts" means the Companies Acts, 1862-1900.

"The Act of 1890" means the Companies (Winding-up) Act, 1890.

"The Company" means a company which is being wound up, or against which proceedings to have it wound up have been commenced.

"Court" means the court which has jurisdiction to wind up the company.

"Creditor" includes a corporation, and a firm of creditors in partnership.

"Gazetted" means published in the *London Gazette*.

"Judge" means in the High Court the judge who for the time being exercises the jurisdiction of the High Court to wind up companies, and in any other court the judge thereof, or officer who exercises the powers of the judge thereof.

"Liquidator" includes an official receiver when acting as liquidator.

"Official Receiver" includes any officer appointed by the Board of Trade to discharge the duties of official receiver under the Acts.

"Palatine Court" means one of the Chancery Courts of the counties Palatine of Lancaster and Durham.

"Proceedings" means the proceedings in the winding up of a company under the Acts and rules.

"Registrar" means in the High Court any of the registrars in bankruptcy of the High Court, and any person who shall be appointed to fill the office of registrar under these rules, and where a winding up of a company is in the district registry of Liverpool or Manchester means the district registrar; and in a County Court, where there are joint registrars means either of such registrars, or a deputy registrar, and in any court other than the High Court, means the officer of the court whose duty it is to exercise in relation to a winding up the functions which in the High Court are exercised by a registrar or master.

"Rules" means these rules, and includes the prescribed forms.

"Sealed" means sealed with the seal of the court.

"Taxing Officer" means the officer of the court whose duty it is to tax costs in the proceedings of the court under its ordinary jurisdiction.

Use of
forms in
Appendix.

3.—(1) The forms in the Appendix, where applicable, and where they are not applicable, forms of the like character, with such variations as circumstances may require, shall be used. Where such forms are applicable any costs occasioned by the use of any other or more prolix form shall be borne by or disallowed to the party using the same, unless the court shall otherwise direct.

(2) Provided that the Board of Trade may from time to time alter any forms which relate to matters of an administrative and not of a judicial character, or substitute new forms in lieu thereof. Where the Board of Trade alters any form, or substitutes any new form in lieu of a form prescribed by these rules, such altered or substituted form shall be published in the *London Gazette*.

Court and Chambers.

Office of
registrar
in High
Court.

4.—(1) All proceedings in the winding up of companies in the High Court shall from time to time be attached to one or more of the registrars, who shall, together with the necessary clerks and officers, and subject to the Acts and rules, act under the general or special directions of the judge.

(2) Every other registrar may act for and in place of such registrar as above-mentioned in all proceedings under the Acts and rules, including the holding of public examinations, and when so acting such other registrar shall be deemed to be the registrar for the purposes of the Acts and rules.

(3) In every cause or matter within the jurisdiction of the judge, whether by virtue of the Acts, or by transfer, or otherwise, the registrar shall, in addition to his powers and duties under the rules, have all the powers and duties of a master, registrar, or taxing master.

Matters in
High Court
to be heard
in court
and
chambers.

5.—(1) The following matters and applications in the High Court shall be heard before the judge in open court:—

(a) Petitions.

(b) Appeals to the High Court from the Board of Trade and from the official receiver when acting as official receiver and not as liquidator.

(c) Applications by the Board of Trade under section 15 of the Act of 1890.

(d) Applications for the committal of any person to prison for contempt.

(e) Such matters and applications as the judge may from time to time by any general or special orders direct to be heard before him in open court.

(2) Examinations of persons summoned before the High Court under section 115 of the Companies Act, 1862, shall be held in court or in chambers as the court shall direct.

(3) Every other matter or application in the High Court under

the Acts to which the rules apply may be heard and determined in chambers.

6.—(1) In courts other than the High Court, the following Proceedings in chambers shall be heard in open court :—

- (a) Petitions.
- (b) Public Examinations.
- (c) Applications under section 167 of the Companies Act, 1862.
- (d) Applications to rectify the register.
- (e) Appeals from the official receiver and Board of Trade.
- (f) Appeals from any decision or act of the liquidator.
- (g) Applications relating to the admission or rejection of proofs.
- (h) Proceedings under section 10 of the Act of 1890.

Proceedings in courts other than High Court.

(2) Any other matter or application may be heard and determined in chambers.

7. Subject to the provisions of the Acts and rules in every Application in chambers.

(1) The registrar may under the general or special directions of the judge hear and determine any application or matter which under the Acts and rules may be heard and determined in chambers.

(2) Any matter or application before the registrar may at any time be adjourned by him to be heard before the judge either in chambers or in court.

(3) Any matter or application may, if the judge, or as the case may be, the registrar, thinks fit, be adjourned from chambers to court, or from court to chambers.

8.—(1) Every application in court other than a petition, Motions shall be made by motion, notice of which shall be served on every person against whom an order is sought, not less than two clear days before the day named in the notice for hearing the motion, which day must be one of the days appointed for the sittings of the court.

and summonses.

Form 3.

(2) Every application in chambers shall be made by summons, which, unless otherwise ordered, shall be served on every person, against whom an order is sought, and shall require the person or persons to whom the summons is addressed to attend at the time and place named in the summons.

9. Subject to the orders of the Lord Chancellor the place of sitting of each County Court having jurisdiction under the Acts, shall for the purposes of such jurisdiction, be the town and place in which the court holds its sittings for the general business of the court, under the County Courts Acts.

Place of sitting of County Court.

10. Subject to the provisions of the Acts, the times of the sitting of each court, other than the High Court in matters of holding the winding up of companies, shall be those which are appointed for the transaction of the general business of the court, unless the judge of any such court shall otherwise order.

Times for holding courts other than the High Court.

Proceedings.

Title of proceedings. 11.—(1) Every proceeding in a winding-up matter shall be dated, and shall with any necessary additions, be intitled as follows :—

Forms 1 and 2.

IN THE COURT
COMPANIES (WINDING UP)

In the Matter of the Companies
Acts, 1862-1900,

with the name of the matter to which it relates. Numbers and dates may be denoted by figures.

(2) The first proceeding in every winding-up matter shall have a distinctive number assigned to it in the office of the registrar, and all proceedings in any matter subsequent to the first proceedings shall bear the same number as the first proceeding.

Written or printed proceedings.

12. All proceedings shall be written or printed, or partly written or partly printed, on paper of the size of 13 inches in length and 8 inches in breadth, or thereabouts, and must have a stitching margin; but no objection shall be allowed to any proof or affidavit on account only of its being written or printed on paper of other size.

Process to be sealed.

13. All orders, summonses, petitions, warrants, process of any kind (including notices when issued by the court) and office copies in any winding-up matter shall be sealed.

Issue of summonses.

14. Every summons in a winding-up matter in the High Court shall be prepared by the applicant or his solicitor, and issued from the office of the registrar. A summons, when sealed, shall be deemed to be issued. The person obtaining the summons shall leave in the registrar's office a duplicate which shall be stamped with the prescribed stamp and filed.

Orders.

15. Every order, whether made in court or in chambers in the winding up of a company, shall be drawn up by the registrar, unless in any proceeding, or classes of proceedings, the judge or registrar who makes the order shall direct that no order need be drawn up. Where a direction is given that no order need be drawn up, the note or memorandum of the order, signed or initialled by the judge or the registrar making the order, shall be sufficient evidence of the order having been made.

File of proceedings in office of registrar (High Court).

16. All petitions, affidavits, summonses, orders, proofs, notices, depositions, bills of costs, and other proceedings in the High Court in a winding-up matter shall be kept and remain of record in the office of the registrar and, subject to the directions of the court, shall be placed in one continuous file, and no proceeding in any winding-up matter shall be filed in the central office.

File of proceedings in courts other than High Court.

17. In courts other than the High Court a file of proceedings in every winding-up matter shall be kept, on which, subject to the directions of the court, all petitions, affidavits, summonses, orders, proofs, notices, depositions, and other proceedings in the

matter shall be placed and remain of record as far as possible in continuous order.

18. In every court all office copies of petitions, affidavits, depositions, papers and writings, or any parts thereof, required by the official receiver or any liquidator, contributory, creditor, officer of a company, or other person entitled thereto, shall be provided by the registrar, and shall, except as to figures, be fairly written out at length, and be sealed and delivered out without any unnecessary delay, and in the order in which they shall have been bespoken.

19. Every person who has been a director or officer of a company which is being wound up, and every duly authorised officer of the Board of Trade, shall be entitled, free of charge, and every contributory and every creditor whose claim or proof has been admitted, shall be entitled on payment of a fee of one shilling for each hour or part of an hour occupied, at all reasonable times, to inspect the file of proceedings and to take copies or extracts from any document therein, or to be furnished with such copies or extracts at a rate not exceeding fourpence per folio of seventy-two words.

20. Where, in the exercise of their functions under the Acts or rules, the Board of Trade or the official receiver requires to inspect or use the file of proceedings the registrar shall (unless the file is at the time required for use in court or by him), on request, transmit the file of proceedings to the Board of Trade or official receiver, as the case may be.

21. Every officer of a court who shall receive any document to which an adhesive stamp shall be affixed, shall immediately upon receipt of the document deface the stamp thereon, in the High Court by perforation, or in such manner as the Commissioners of Inland Revenue may from time to time direct, and in any other court by writing partly on the stamp and partly on the document the name of the matter, or in such other manner as the Commissioners of Inland Revenue may from time to time direct, and no such document shall be filed or delivered until the stamp thereon shall have been defaced in manner aforesaid; and it shall be the duty of the party presenting or receiving such document to see that the defacement hereby prescribed has been duly made.

Service and Execution of Process and Enforcement of Orders.

22.—(1) It shall be the duty of the high bailiff of a County Court to serve such orders, summonses, petitions and notices as the court may require him to serve; to execute warrants and other process; to attend any sittings of the court (but not sittings in chambers); and to do and perform all such things as may be required of him by the court.

(2) But this rule shall not be construed to require any order, summons, petition, or notice to be served by a bailiff or officer

of the court which is not specially by the Acts or rules required to be so served, unless the court in any particular proceeding by order specially so directs.

Service.

23. (1) All notices, summonses, and other documents other than those of which personal service is required, may be sent by prepaid post letter to the last known address of the person to be served therewith; and the notice, summons, or document shall be considered as served at the time that the same ought to be delivered in the due course of post by the post office, and notwithstanding the same may be returned by the post office.

(2) No service shall be deemed invalid by reason that the name, or any of the names other than the surname of the person to be served, has been omitted from the document containing the person's name, provided that the court is satisfied that in other respects the service of the document has been sufficient.

Enforcement of orders.

24.—(1) Every order of a court having jurisdiction to wind up a company, made in the exercise of the powers conferred by the Acts and rules, may be enforced by such court as if it were a judgment or order of the court made in the exercise of its ordinary jurisdiction.

(2) Every such order of a County Court, and every process issued therein may be enforced, executed and dealt with not only by such court, but by any County Court, whether such County Court has or has not jurisdiction to wind up a company, as if such order or process were made or issued for the enforcement of a judgment or order made by such last mentioned court in the exercise of its ordinary jurisdiction.

Petition.

Form of petition.

25. Every petition for the winding up of a company by the court, or subject to the supervision of the court, shall be in the Forms Nos. 4 and 5 in the Appendix with such variations as circumstances may require.

Forms 4 and 5.

Presentation of petition.

26. A petition shall be presented at the office or chambers of the registrar, who shall appoint the time and place at which the petition is to be heard. Notice of the time and place appointed for hearing the petition shall be written on the petition and sealed copies thereof, and the registrar may at any time before the petition has been advertised, alter the time appointed, and fix another time.

Advertisement of petition.

27. Every petition shall be advertised seven clear days before the hearing, as follows:

Form 6.

- (1) In the case of a company whose registered office, or if there shall be no such office, then whose principal or last known principal place of business is or was situate within ten miles of the principal entrance of the Royal Courts of Justice, once in the *London Gazette*, and once at least in one London daily morning newspaper, or in such other newspaper as the court directs.

- (2) In the case of any other company, once in the *London Gazette*, and once at least in one local newspaper circulating in the district where the registered office, or principal or last known place of business, as the case may be, of such company is or was situate, or in such other newspaper as shall be directed by the court.
- (3) The advertisement shall state the day on which the petition was presented, and the name and address of the petitioner, and of his solicitor and London agent (if any), and shall contain a note at the foot thereof, stating that any person who intends to appear on the hearing of the petition, either to oppose or support, must send notice of his intention to the petitioner, or to his solicitors or London agent, within the time and manner prescribed by Rule 38, and an advertisement of a petition for the winding up of a company by the court which does not contain such a note shall be deemed irregular.

27a. If the petitioner, or his solicitor, does not within the time prescribed by Rule 27 of the Companies (Winding-up) Rules, 1908, or within such extended time as the registrar may allow, duly advertise the petition in the manner prescribed by the said rule, the appointment of the time and place at which the petition is to be heard, shall be cancelled by the registrar, and the petition shall be removed from the file in the Companies (Winding-up) Office, unless the judge or the registrar shall otherwise direct.¹

28. Every petition shall, unless presented by the company, be served at the registered office, if any, of the company, and if there is no registered office, then at the principal or last known principal place of business of the company, if any such can be found, upon any member, officer, or servant of the company there, or in case no such member, officer or servant can be found there, then by being left at such registered office or principal place of business, or by being served on such member or members of the company as the court may direct; and where the company is being wound up voluntarily, shall also be served upon the liquidator (if any) appointed for the purpose of winding up the affairs of the company.

29. Every petition for the winding up of a company by the court, or subject to the supervision of the court, shall be verified by an affidavit referring thereto. Such affidavit shall be made by the petitioner, or by one of the petitioners, if more than one, or, in case the petition is presented by a corporation, by some director, secretary, or other principal officer thereof, and shall be sworn after and filed within four days after the petition is presented, and such affidavit shall be sufficient *prima facie* evidence of the statements in the petition.

Forms 7
and 8.

Form 9.

¹ This rule was added in March, 1906.

Copy of petition to be furnished to creditor or contributory. 30. Every contributory or creditor of the company shall be entitled to be furnished, by the solicitor of the petitioner, with a copy of the petition, within twenty-four hours after requiring same, on paying the rate of fourpence per folio of seventy-two words for such copy.

Official Receiver as Provisional Liquidator.

Appointment of provisional liquidator. 31.—(1) After the presentation of a petition, upon the application of a creditor, or of a contributory, or of the company, and upon proof by affidavit of sufficient grounds for the appointment of the official receiver as provisional liquidator, the court, if it thinks fit, and upon such terms as in the opinion of the court shall be just and necessary, may make the appointment.

Form 10. (2) The order appointing the official receiver to be provisional liquidator, shall bear the number of the petition, and shall state the nature and a short description of the property of which the official receiver is ordered to take possession, and the duties to be performed by the official receiver.

(3) Subject to any order of the court, if no order for the winding up of the company is made upon the petition, or if an order for the winding up of the company on the petition is rescinded, or if all proceedings on the petition are stayed, the official receiver as provisional liquidator shall be entitled to be paid, out of the property of the company, all the costs, charges, and expenses properly incurred by him as provisional liquidator, including the fees payable to the Board of Trade under the scale of fees in force for the time being, and may retain out of such property the amounts of such costs, charges, expenses, and fees.

Hearing of Petitions and Orders made thereon.

Attendance before hearing to show compliance with rules. 32. After a petition has been presented, the petitioner, or his solicitor, shall, on a day to be appointed by the registrar, attend before the registrar and satisfy him that the petition has been duly advertised, that the prescribed affidavit verifying the statements therein, and the affidavit of service (if any) have been duly filed and that the provisions of the rules as to petitions for winding up companies have been duly complied with by the petitioner. No order for the winding up of a company shall be made on the petition of any petitioner who has not, prior to the hearing of the petition, attended before the registrar at the time appointed, and satisfied him in manner required by this rule.

Notice by persons who intend to appear. 33. Every person who intends to appear on the hearing of a petition shall serve on, or send by post, to the petitioner, or his solicitor or London agent, at the address stated in the advertisement of the petition, notice of his intention. The notice shall be signed by such person, or his solicitor or London agent, and shall be served, or if sent by post shall be posted in such time

as in ordinary course of post to reach the address not later than six o'clock in the afternoon of the day previous to the day appointed for the hearing of the petition. The notice may be in Form 11 with such variations as circumstances may require. A Form 11. person who has failed to comply with this rule shall not, without the special leave of the court, be allowed to appear on the hearing of the petition.

34. The petitioner, or his solicitor or London agent, shall prepare a list of the names and addresses of the persons who have given notice of their intention to appear on the hearing of the petition, and of their respective solicitors, which shall be in Form 12. A fair copy of the list shall, on the day appointed for hearing the petition, be handed by the petitioner, or his solicitor or London agent, to the court prior to the hearing of the petition.

35.—(1) Affidavits in opposition to a petition that a company may be wound up under the order or subject to the supervision of the court shall be filed within seven days of the date on which the affidavit verifying the petition is filed, and notice of the filing of every affidavit in opposition to such a petition shall be given to the petitioner or the solicitor or London agent of the petitioner, on the day on which the affidavit is filed.

(2) An affidavit in reply to an affidavit filed in opposition to a petition shall be filed within three days of the date on which notice of such affidavit is received by the petitioner or the solicitor or London agent of the petitioner.

36. When a petitioner consents to withdraw his petition, or to allow it to be dismissed, or the hearing adjourned, the court may, upon such terms as it may think just, substitute as petitioner any creditor or contributory who, in the opinion of the court, would have a right to present a petition,¹ and who is desirous of prosecuting the petition.

Order to Wind up a Company.

37. When an order for the winding up of a company, or for the appointment of the official receiver as provisional liquidator prior to the making of an order for the winding up of the company, has been pronounced in court, the registrar shall, on the same day, send to the official receiver a notice informing him that the order has been pronounced.

The notice may be in Forms 13 and 14 respectively, with such variations as circumstances may require.

38. It shall be the duty of the petitioner, or his solicitor or London agent, and of all other persons who have appeared on the hearing of the petition, at latest on the day following the day on which an order for the winding up of a company is pronounced in court, to leave at the registrar's office all the documents required for the purpose of enabling the registrar to complete the order forthwith.

¹ See Companies Act, 1867, Sect. 40, *ante* p. 157.

No appointment for settling order. 39. It shall not be necessary for the registrar to make an appointment to settle the order, unless in any particular case the special circumstances make an appointment necessary.

Contents of winding-up order. 40. An order to wind up a company shall contain at the foot thereof a notice stating that it will be the duty of the person who is at the time secretary or chief officer of the company, and of such of the persons who are liable to make out or concur in making out the company's statement of affairs, as the official receiver may require, to attend on the official receiver forthwith on the service of the order at the place mentioned therein.

Form 15. 41.—(1) When an order that a company be wound up, or for the appointment of the official receiver as provisional liquidator has been made—
Transmission and advertisement of winding-up order.

(a) Three copies of the order sealed with the seal of the court shall forthwith be sent by post or otherwise by the registrar to the official receiver.

(b) The official receiver shall cause a sealed copy of the order to be served upon the secretary or other chief officer of the company at the registered office of the company (if any), or upon such other person or persons, or in such other manner as the court may direct, and if the order is that the company be wound up by the court, shall forward to the registrar of Joint Stock Companies the copy of the order which by section 88 of the Companies Act, 1862, is directed to be so forwarded by the company.

(c) The official receiver shall forthwith give notice of the order to the Board of Trade, who shall forthwith cause the notice to be gazetted.

Form 17. (d) The official receiver shall forthwith send notice of the order to such local paper as the Board of Trade may from time to time direct, or, in default of such direction, as he may select.

Form 16. (2) An order for the winding up of a company, subject to the supervision of the court, shall before the expiration of twelve days from the date thereof be advertised by the petitioner, once in the *London Gazette*, and shall be served on such persons (if any) and in such manner as the court shall direct.

Transfers of Actions and Proceedings.

Transfer of actions. 42.—(1) Where an order has been made in the High Court for the winding up of a company the judge shall have power, without further consent, to order the transfer to him of any action, cause or matter pending in any other court or division brought or continued by or against the company, and any action or proceeding by a mortgagee or debenture holder of the company against the company, for the purpose of realising his security, or by any other person for the purpose of enforcing a

claim against the company's assets or property, which is pending in the High Court or before any judge thereof shall without further order be transferred to the judge of the High Court.

(2) Where any action brought by or against a company against which a winding up order has been made is transferred to the judge of the High Court, the registrar may, under the general or special directions of the judge, hear, determine and deal with any application, matter, or proceeding which, if the action had not been transferred, would have been determined in chambers. These provisions shall apply to the proceedings in any action in which by the rules of the Supreme Court or otherwise the chamber proceedings are directed to be dealt with by the registrar.

43. The judge of the High Court may at any time, for good cause shown, order the proceedings in any court other than the High Court to be transferred to the High Court, or any proceedings in the High Court to be transferred from the High Court to any other court.

44. The judge of any court, other than the High Court or a Palatine Court, may at any time, for good cause shown, order any proceedings which have been commenced or are pending in his court to be transferred to any court which has jurisdiction to order the winding up of a company, not being the High Court or a Palatine Court.

45. In a winding up by the court, notice of an application for a transfer of proceedings shall before the hearing thereof, be served by the applicant on the official receiver of the court in which the proceedings are pending and on the official receiver of the court to which the proceedings are sought to be transferred.

46. When an order for the transfer of proceedings has been made—

- (1) The person on whose application the transfer has been made shall lodge with the registrar of the court to which the proceedings are transferred a sealed copy of the order of transfer.
- (2) In a winding up by the court the official receiver of the court to which the proceedings are transferred shall become the official receiver in the proceedings.
- (3) The records of the proceedings shall be transmitted to the registrar of the court to which the proceedings are transferred, and in a winding up by the court such registrar, as soon as he has received the records, shall give notice of the transfer to the official receiver of his court, who shall give notice of the transfer to the Board of Trade.
- (4) The proceedings shall receive a new distinctive number.

47. Whenever the Lord Chancellor, by order under his hand, shall exclude any County Court from having jurisdiction under the Acts, or shall attach the district or any part of the district of a County Court to the High Court, or any other County Court,

Transfer of proceedings by judge of High Court.

Form 18.

Transfer of proceedings by judge of court other than High Court or Palatine Court.

Form 18.

Notice of application to official receiver.

Procedure where proceedings transferred.

Form 19.

Transfer of jurisdiction of County Courts.

or shall detach the district or any part of the district of any County Court from the district and jurisdiction of the High Court, any winding-up matters pending in the court or district to which the order relates shall become transferred to such court as shall be mentioned for the purpose in the order; and, thereupon, the rules as to transfer of proceedings shall apply to the transfer of such pending proceedings in all respects as if the proceedings had been transferred by order of a court having power to transfer proceedings.

Special Manager.

Appoint-
ment of
special
manager.

48.—(1) An application by the official receiver for the appointment of a special manager shall be supported by a report of the official receiver, which shall be placed on the file of proceedings, and in which shall be stated the amount of remuneration which, in the opinion of the official receiver, ought to be allowed to the special manager. No affidavit by the official receiver in support of the application shall be required.

(2) The remuneration of the special manager shall, unless the court otherwise in any special case directs, be stated in the order appointing him, but the court may at any subsequent time for good cause shown make an order for payment to the special manager of further remuneration.

(3) A copy of the order appointing a special manager shall be transmitted to the Board of Trade by the official receiver.

Account-
ing by
special
manager.

49. Every special manager shall account to the official receiver, and the special manager's accounts shall be verified by affidavit, and, when approved by the official receiver, the totals of the receipts and payments shall be added by the official receiver to his accounts.

Form 20.

First Meetings of Creditors and Contributories in a Winding up by the Court.

Notice of
first meet-
ings to
officers of
company.

50. The official receiver shall give to each of the Directors and other officers of the company who in his opinion ought to attend the first meetings of creditors and contributories seven days' notice of the time and place appointed for each meeting. The notice may be either delivered personally or sent by prepaid post letter, as may be convenient. It shall be the duty of every director or officer who receives notice of such meeting to attend if so required by the official receiver.

Form 23.

Notice of
first meet-
ings to
Board of
Trade.

51. The official receiver shall fix the days for the first meetings of creditors and contributories, and shall forthwith give notice thereof to the Board of Trade who shall gazette the same.

Notice to
contribu-
tories.
Form 22.

52. Notice of the first meeting of contributories shall be sent to every person who appears from the company's books or otherwise to be a contributory of the company.

Statement of Affairs.

53.—(1) Every person who, under section 7 of the Act of 1890, has been required by the official receiver to submit and verify a statement as to the affairs of the company, shall be furnished by the official receiver with forms and instructions for the preparation of the statement. The statement shall be made out in duplicate, one copy of which shall be verified by affidavit. The official receiver shall cause to be filed with the registrar the verified statement of affairs. Preparation of statement of affairs. Form 26.

(2) The official receiver may from time to time hold personal interviews with every such person for the purpose of investigating the company's affairs, and it shall be the duty of every such person to attend on the official receiver at such time and place as the official receiver may appoint and give the official receiver all information that he may require.

54. When any person requires any extension of time for submitting the statement of affairs, he shall apply to the official receiver, who may, if he thinks fit, give a written certificate extending the time, which certificate shall be filed with the proceedings in the winding up and shall render an application to the court unnecessary. Extension of time for submitting statement of affairs.

55. After the statement of affairs of a company has been submitted to the official receiver it shall be the duty of each person who has made or concurred in making it, if and when required, to attend on the official receiver and answer all such questions as may be put to him, and give all such further information as may be required of him by the official receiver in relation to the statement of affairs. Information subsequent to statement of affairs.

56. Any default in complying with the requirements of section 7 of the Act of 1890, may be reported by the official receiver to the court. Default.

57. A person who is required to make or concur in making any statement of affairs of a company shall, before incurring any costs or expenses in and about the preparation and making of the statement, apply to the official receiver for his sanction, and submit a statement of the estimated costs and expenses which it is intended to incur; and, except by order of the court, no person shall be allowed out of the assets of the company any costs or expenses which have not before being incurred been sanctioned by the official receiver. Expenses of statement of affairs.

Appointment of Liquidator in a Winding up by the Court.

58.—(1) As soon as possible after the first meetings of creditors and contributories have been held the official receiver, or the chairman of the meeting, as the case may be, shall report the result of each meeting to the court. Appointment of liquidator on report of meetings of creditors and contributories.

(2) Upon the result of the meetings of creditors and contributories being reported to the court, the court may, if the meeting of creditors and the meeting of contributories have each Form 27.

passed the same resolutions, or if the resolutions passed at the two meetings are identical in effect, upon the application of the official receiver, forthwith make the appointments necessary for giving effect to such resolutions. In any other case the court shall, on the application of the official receiver, fix a time and place for considering the resolutions and determinations (if any) of the meetings, deciding differences (if any), and making such order as shall be necessary.

(3) When a time and place have been fixed for the consideration of the resolutions and determinations of the meetings, such time and place shall be advertised by the official receiver in such manner as the court shall direct, but so that the first or only advertisement shall be published not less than seven days before the time so fixed.

(4) Upon the consideration of the resolutions and determinations of the meetings the court shall hear the official receiver and any creditor or contributory.

Forms 28 and 103 (7). (5) If a liquidator is appointed, a copy of the order appointing him shall be transmitted to the Board of Trade by the official receiver, and the Board of Trade shall, as soon as the liquidator has given security, cause notice of the appointment to be gazetted. The expense of gazetting the notice of the appointment shall be paid by the liquidator, but may be charged by him on the assets of the company.

Form 30. (6) Every appointment of a liquidator or committee of inspection shall be advertised by the liquidator in such manner as the court directs immediately after the appointment has been made, and the liquidator has given the required security.

(7) If a liquidator in a winding up by the court shall die, or resign, or be removed, another liquidator may be appointed in his place in the same manner as in the case of a first appointment, and the official receiver shall, on the request of not less than one-tenth in value of the creditors, or contributories, summon meetings for the purpose of determining whether or not the vacancy shall be filled; but none of the provisions of this rule shall apply where the liquidator is released under section 22 of the Act of 1890, in which case the official receiver shall remain liquidator.

Style of official receiver when he is liquidator. 59. When the official receiver is liquidator of a company he shall be styled "official receiver and liquidator".

Security by Liquidator or Special Manager in a Winding up by the Court.

Standing security to Board of Trade. 60. In the case of a special manager or a liquidator other than the official receiver, the following provisions as to security shall have effect, namely:—

(1) The security shall be given to such officers or persons, and in such manner as the Board of Trade may from time to time direct,

- (2) It shall not be necessary that security shall be given in each separate winding up; but security may be given either specially in a particular winding up, or generally, to be available for any winding up in which the person giving security may be appointed, either as liquidator or special manager.
- (3) The Board of Trade shall fix the amount and nature of such security, and may from time to time, as they think fit, either increase or diminish the amount of special or general security which any person has given.
- (4) The certificate of the Board of Trade that a liquidator or special manager has given security to their satisfaction shall be filed with the registrar. Form 29.
- (5) The cost of furnishing the required security by a liquidator or special manager, including any premiums which he may pay to a guarantee society, shall be borne by him personally, and shall not be charged against the assets of the company as an expense incurred in the winding up.

61.—(1) If a liquidator or special manager fails to give the required security within the time stated for that purpose in the order appointing him, or any extension thereof, the official receiver shall report such failure to the court, who may thereupon rescind the order appointing the liquidator or special manager. Failure to give or keep up security.

(2) If a liquidator or special manager fails to keep up his security, the official receiver shall report such failure to the court, who may thereupon remove the liquidator or special manager, and make such order as to costs as the court shall think fit.

(3) Where an order is made under this rule rescinding an order for the appointment of or removing a liquidator, the court may direct that another liquidator is to be appointed, and thereupon the same meetings shall be summoned and the same proceedings may be taken as in the case of a first appointment of a liquidator.

Public Examination.

62. A report made by the official receiver pursuant to section 8 of the Act of 1890 shall state, in a narrative form, the facts and matters which the official receiver desires to bring to the notice of the court, and his opinion as required by the said section. Report of official receiver to be filed.

63. The official receiver may apply to the court to fix a day for the consideration of the report, and on such application the court shall appoint a day on which the report shall be considered. Appointment of time for consideration of report.

64. The consideration of the report shall be before the judge of the court personally in chambers, and the official receiver shall personally, or by counsel or solicitor, attend the consideration of the report, and give the court any further information or Consideration of report.

explanation with reference to the matters stated in the report which the court may require.

Procedure consequent on order for public examination.
Form 31.

65. Where the judge makes an order under section 8 of the Act of 1890, directing any person or persons to attend for public examination :—

- (a) The examination shall be held before the judge. Provided that in the High Court the judge may direct that the whole or any part of the examination of any such person or persons be held before the registrar, or before any of the persons mentioned in subsection 9 of the said section.
- (b) The judge may, if he thinks fit, either in the order for examination, or by any subsequent order, give directions as to the special matters on which any such person is to be examined.
- (c) Where on an examination held before the registrar, or one of the persons mentioned in subsection 9 of the said section, he is of opinion that such examination is being unduly or unnecessarily protracted, or for any other sufficient cause, he may adjourn the examination of any person, or any part of the examination, to be held before the judge.

Application for day for holding examination.

Appointment of time and place for public examination.
Forms 32 and 33.

Notice of public examination to creditors and contributories.

66. Upon an order directing a person to attend for public examination being made, the official receiver shall apply for the appointment of a day on which the public examination is to be held.

67. A day and place shall be appointed for holding the public examination, and notice of the day and place so appointed shall be given by the official receiver to the person who is to be examined by sending such notice in a registered letter addressed to his usual or last known address.

68.—(1) The official receiver shall give notice of the time and place appointed for holding a public examination to the creditors and contributories by advertisement in such newspapers as the Board of Trade from time to time direct, or in default of any such direction as the official receiver thinks fit, and shall also forward notice of the appointment to the Board of Trade to be gazetted.

(2) Where an adjournment of the public examination has been directed, notice of the adjournment shall not, unless otherwise directed by the court, be advertised in any newspaper, but it shall be sufficient to publish in the gazette a notice of the time and place fixed for the adjourned examination.

Default in attending.
Form 40.

69.—(1) If any person who has been directed by the court to attend for public examination fails to attend at the time and place appointed for holding or proceeding with the same, and no good cause is shown by him for such failure, or if before the day appointed for the examination the official receiver satisfies the court that such person has absconded, or that there is reason for believing that he is about to abscond with the view of avoiding examination, it shall be lawful for the court, upon its

being proved to the satisfaction of the court, that notice of the order and of the time and place appointed for attendance at the public examination was duly served, without any further notice, to issue a warrant for the arrest of the person required to attend, or to make such other order as the court shall think just.

(2) A warrant of arrest issued by the High Court under this rule shall be issued in the central office of the Supreme Court of arrest pursuant to an order of the court directing such issue.

70. The notes of every public examination shall, after being signed as required by the Act of 1890, be filed with the registrar.

Notes of examination to be filed.
Forms 36 and 37.

Proceedings against Delinquent Directors, Promoters, and Officers.

71.—(1) An application under section 10 of the Act of 1890, shall in any court other than the High Court be made by motion to the court. In the High Court the application shall be made by a summons returnable in the first instance in chambers, in which summons shall be stated the nature of the declaration or order for which application is made, and the grounds of the application, and which summons, unless otherwise ordered by the court, shall be served, in the manner in which an originating summons is required by the rules of the Supreme Court to be served, on every person against whom an order is sought, not less than eight days before the day named in the summons for hearing the application. Where the application is made by the official receiver or liquidator he may make a report to the court stating any facts and information on which he proceeds which are verified by affidavit, or derived from sworn evidence in the proceedings. Where the application is made by any other person it shall be supported by affidavit to be filed by him.

Application against delinquent directors, officers and promoters.

(2) On the return of the summons the court may give such directions as it shall think fit for the hearing of the summons before the judge in court, the taking of evidence wholly or in part by affidavit or orally, and the cross-examination either before the judge on the hearing in court or in chambers of any deponents to affidavits in support of or in opposition to the application.

72. Where the application is made by motion, notice of the intended motion shall be served on every person against whom an order is sought, not less than eight days before the day named in the notice for hearing the motion. A copy of every report and affidavit intended to be used in support of the motion shall be served on every person to whom notice of motion is given not less than four days before the hearing of the motion.

Notice of application.

73. Where in the course of the proceedings in a winding up by the court an order has been made for the public examination of persons named in the order pursuant to section 8 of the Act of 1890, and it appears from the examination that the persons examined, or some of them, have misapplied, or retained, or

Use of depositions taken at public examination.

become liable, or accountable for moneys or property of the company, or been guilty of misfeasance or breach of trust in relation to the company, then in any proceedings subsequently instituted under section 10 of the said Act, for the purpose of examining into the conduct of the said persons, or any of them, and compelling repayment or restoration to the company of any moneys or property, or contribution by way of compensation to the assets of the company by such persons or any of them, the verified notes of the examination of each person who was examined under the order shall, subject as hereinafter mentioned, and to any order or directions of the court as to the manner and extent in and to which the notes shall be used, and subject to all just exceptions to the admissibility in evidence against any particular person or persons of any of the statements contained in the notes of the examinations, be admissible in evidence against any of the persons against whom the application is made who, under section 8 of the said Act, and the order for the public examination, was or had the opportunity of being present at and taking part in the examination. Provided that before any such notes of a public examination shall be used on any such application, the person intending to use the same shall, not less than fifteen days before the day appointed for hearing the application, give notice of such intention to each person against whom it is intended to use such notes, or any of them, specifying the notes or parts of the notes, which it is intended to read against him, and furnish him with copies of such notes, or parts of notes (except notes of the person's own depositions), and provided also that every person against whom the application is made shall be at liberty to cross-examine or re-examine (as the case may be) any person the notes of whose examination are read, in all respects as if such person had made an affidavit on the application.

Witnesses and Depositions.

Shorthand notes. 74. If the court or the officer of the court before whom any examination under the Acts and rules is directed to be held shall in any case, and at any stage of the proceedings, be of opinion that it would be desirable that a person (other than the person before whom an examination is taken) should be appointed to take down the evidence of any person examined in shorthand or otherwise, it shall be competent for the court or officer aforesaid to make such appointment. The person at whose instance the examination is taken shall nominate a person for the purpose, and the person so nominated shall be appointed, unless the court or officer holding the examination shall otherwise order. Every person so appointed shall be paid a sum not exceeding one guinea a day, and a sum not exceeding eightpence per folio of ninety words for any transcript of the evidence that may be required, and such sums shall be paid by the party at whose in-

Forms 34 and 35.

stance the appointment was made, or out of the assets of the company as may be directed by the court.

75.—(1) If a person examined before a registrar or other officer of the court who has no power to commit for contempt of court, refuses to answer to the satisfaction of the registrar or officer any question which he may allow to be put, the registrar or officer shall report such refusal to the judge, and upon such report being made the person in default shall be in the same position, and be dealt with in the same manner as if he had made default in answering before the judge. Committal of contumacious witness. Form 38.

(2) The report shall be in writing, but without affidavit, and shall set forth the question put, and the answer (if any) given by the person examined.

(3) The registrar or other officer shall, before the conclusion of the examination at which the default in answering is made, name the time when and the place where the default will be reported to the judge, and upon receiving the report the judge may take such action thereon as he shall think fit. If the judge is sitting at the time when the default in answering is made, such default may be reported immediately.

76.—(1) The official receiver may attend in person, or by an assistant official receiver, any examination of a witness under section 115 of the Companies Act, 1862, on whosever application the same has been ordered, and may take notes of the examination for his own use, and put such questions to the persons examined as the court may allow. Depositions at private examinations.

(2) The notes of the depositions of a person examined under section 115 of the Companies Act, 1862, or under any order of the court before the court, or before any officer of the court, or person appointed to take such an examination (other than the notes of the depositions of a person examined at a public examination under section 8 of the Act of 1890) shall not be filed, or be open to the inspection of any creditor, contributory, or other person, except the official receiver or liquidator, unless and until the court shall so direct, and the court may from time to time give such general or special directions as it shall think expedient as to the custody and inspection of such notes and the furnishing of copies of or extracts therefrom.

Arrangements with Creditors and Contributories in a Winding up by the Court.

77. In a winding up by the court if application is made to the court to sanction any compromise or arrangement the court may, before giving its sanction thereto, hear a report by the official receiver as to the terms of the scheme, and as to the conduct of the directors and other officers of the company, and as to any other matters which, in the opinion of the official receiver or the Board of Trade, ought to be brought to the attention of the Report by official receiver on arrangements and promises.

court. The report shall not be placed upon the file, unless and until the court shall direct it to be filed.

Collection and Distribution of Assets in a Winding up by the Court.

Collection and distribution of company's assets by liquidator. 78.—(1) The duties imposed on the court by section 98 of the Companies Act, 1862, in a winding up by the court with regard to the collection of the assets of the company and the application of the assets in discharge of the company's liabilities shall be discharged by the liquidator as an officer of the court subject to the control of the court.

(2) For the purpose of the discharge by the liquidator of the duties imposed by section 98 of the Companies Act, 1862, as varied by section 13 of the Act of 1890, and the last preceding rule, the liquidator in a winding up by the court shall for the purpose of acquiring or retaining possession of the property of the company, be in the same position as if he were a receiver of the property appointed by the High Court, and the court may, on his application, enforce such acquisition or retention accordingly.

Power of liquidator to require delivery of property. 79. The powers conferred on the court by section 100 of the Companies Act, 1862, shall be exercised by the liquidator. Any contributory for the time being on the list of contributories, trustee, receiver, banker or agent or officer of a company which is being wound up under order of the court shall, on notice from the liquidator and within such time as he shall by notice in writing require, pay, deliver, convey, surrender or transfer to or into the hands of the liquidator any sum of money or balance, books, papers, estate or effects which happen to be in his hands for the time being and to which the company is *primâ facie* entitled.

Form 41.

List of Contributories in a Winding up by the Court.

Liquidator to settle list of contributories. 80. The liquidator shall with all convenient speed after his appointment settle a list of contributories of the company, and shall appoint a time and place for that purpose. The list of contributories shall contain a statement of the address of, and the number of shares or extent of interest to be attributed to each contributory, and shall distinguish the several classes of contributories. As regards representative contributories the liquidator shall, so far as practicable, observe the requirements of section 99 of the Companies Act, 1862.

Form 42.

Appointment of time and place for settlement of list. 81. The liquidator shall give notice in writing of the time and place appointed for the settlement of the list of contributories to every person whom he proposes to include in the list, and shall state in the notice to each person in what character and for what number of shares or interest he proposes to include such person in the list.

43

82. On the day appointed for settlement of the list of contributories the liquidator shall hear any person who objects to being settled as a contributory, and after such hearing shall finally settle the list, which when so settled shall be the list of contributories of the company. Settlement of list of contributories. Form 45.

83. The liquidator shall forthwith give notice to every person whom he has finally placed on the list of contributories stating in what character and for what number of shares or interest he has been placed on the list, and in the notice inform such person that any application for the removal of his name from the list, or for a variation of the list, must be made to the court by summons within twenty-one days from the date of the service on the contributory or alleged contributory of notice of the fact that his name is settled on the list of contributories. Notice to contributories. Form 46.

84. (1) Subject to the power of the court to extend the time or to allow an application to be made notwithstanding the expiration of the time limited for that purpose, no application to the court by any person who objects to the list of contributories as finally settled by the liquidator shall be entertained after the expiration of twenty-one days from the date of the service on such person of notice of the settlement of the list. Application to the court to vary the list. Form 49.

(2) The official receiver shall not in any case be personally liable to pay any costs of or in relation to an application to set aside or vary his act or decision settling the name of a person on the list of contributories of a company.

85. The liquidator may from time to time vary or add to the list of contributories, but any such variation or addition shall be made in the same manner in all respects as the settlement of the original list. Variation of or addition to list of contributories. Form 47.

Calls.

86. The powers and duties of the court in relation to making calls upon contributories conferred by section 102 of the Companies Act, 1862, shall and may be exercised, in a winding up by the court, by the liquidator as an officer of the court subject to the provisions of section 13 of the Act of 1890, and to the following regulations:— Calls by liquidator.

- (1) Where the liquidator desires to make any call on the contributories, or any of them for any purpose authorised by the Acts, if there is a Committee of Inspection he may summon a meeting of such committee for the purpose of obtaining their sanction to the intended call. Form 50.
- (2) The notice of the meeting shall be sent to each member of the Committee of Inspection in sufficient time to reach him not less than seven days before the day appointed for holding the meeting, and shall contain a statement of the proposed amount of the call, and the purpose for which it is intended. Notice of the intended call and the intended meeting of the Committee of Inspection Form 51.

shall also be advertised once at least in a London newspaper, or, where the winding up is not in the High Court, in a newspaper circulating in the district of the court in which the proceedings are pending. The advertisement shall state the time and place of the intended meeting of the Committee of Inspection, and that each contributory may either attend the said meeting and be heard, or make any communication in writing to the liquidator or members of the Committee of Inspection to be laid before the meeting, in reference to the said intended call.

- (3) At the meeting of the Committee of Inspection any statements or representations made either to the meeting personally or addressed in writing to the liquidator or members of the committee by any contributory shall be considered before the intended call is sanctioned.

Form 52.

- (4) The sanction of the committee shall be given by resolution, which shall be passed by a majority of the members present.

- (5) Where there is no Committee of Inspection, the liquidator shall not make a call without obtaining the leave of the court.

Application to the court for leave to make a call.

87. In a winding up by the court an application to the court for leave to make any call on the contributories of a company, or any of them, for any purpose authorised by the Acts, shall be made by summons stating the proposed amount of such call, which summons shall be served four clear days at the least before the day appointed for making the call on every contributory proposed to be included in such call; or if the court so directs, notice of such intended call may be given by advertisement, without a separate notice to each contributory.

Forms 54 to 57.

Document making the call.

88. When the liquidator is authorised by resolution or order to make a call on the contributories he shall file with the registrar a document in the Form 58 with such variations as circumstances may require making the call.

Form 58.
Service of notice of a call.

89. When a call has been made by the liquidator in a winding up by the court, a copy of the resolution of the Committee of Inspection or order of the court (if any, as the case may be), shall forthwith after the call has been made be served upon each of the contributories included in such call, together with a notice from the liquidator specifying the amount or balance due from such contributory in respect of such call, but such resolution or order need not be advertised unless for any special reason the court so directs.

Forms 52, 53 and 59.

Enforcement of call.

90. The payment of the amount due from each contributory on a call may be enforced by order of the court, to be made in chambers on summons by the liquidator.

Forms 60, 61 and 62.

Proofs.

Proof of

91. In a winding up by the court every creditor shall prove his debt.

92. A debt may be proved in any winding up by delivering or Mode of sending through the post an affidavit verifying the debt. In a proof. winding up by the court the affidavit shall be so sent to the official receiver or, if a liquidator has been appointed, to the liquidator; and in any other winding up the affidavit may be so sent to the liquidator.

93. An affidavit proving a debt may be made by the creditor Verification himself or by some person authorised by or on behalf of the of proof. creditor. If made by a person so authorised, it shall state his authority and means of knowledge.

94. An affidavit proving a debt shall contain or refer to a Contents statement of account showing the particulars of the debt, and of proof. shall specify the vouchers, if any, by which the same can be substantiated. The official receiver or liquidator to whom the proof is sent may at any time call for the production of the Form 68. vouchers.

95. An affidavit proving a debt shall state whether the creditor Statement is or is not a secured creditor. of security.

96. An affidavit proving a debt may in a winding up by the Proof before whom court be sworn before an official receiver, or assistant official receiver, or any officer of the Board of Trade or any clerk of an official receiver duly authorised in writing by the court or the Board of Trade in that behalf. sworn.

97. A creditor shall bear the cost of proving his debt unless Costs of proof. the court otherwise orders.

98. A creditor proving his debt shall deduct therefrom all Discount. trade discounts, but he shall not be compelled to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash.

99. When any rent or other payment falls due at stated Periodical periods, and the order or resolution to wind up is made at any payments. time other than one of those periods, the persons entitled to the rent or payment may prove for a proportionate part thereof up to the date of the winding up order or resolution as if the rent or payment grew due from day to day. Provided that where the liquidator remains in occupation of premises demised to a company which is being wound up, nothing herein contained shall prejudice or affect the right of the landlord of such premises to claim payment by the company, or the liquidator, of rent during the period of the company's or the liquidator's occupation.

100. On any debt or sum certain, payable at a certain time Interest. or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the winding-up order or resolution, the creditor may prove for interest at a rate not exceeding four per centum per annum to that date from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made, giving notice that interest will be claimed from the date of the demand until the time of payment.

Proof for debt payable at a future time.

101. A creditor may prove for a debt not payable at the date of the winding-up order or resolution, as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of five pounds per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted.

Workmen's wages.

Form 64.

102. In any case in which it appears that there are numerous claims for wages by workmen and others employed by the company, it shall be sufficient if one proof for all such claims is made either by a foreman or by some other person on behalf of all such creditors. Such proof shall have annexed thereto as forming part thereof, a schedule setting forth the names of the workmen and others, and the amounts severally due to them. Any proof made in compliance with this rule shall have the same effect as if separate proofs had been made by each of the said workmen and others.

Production of bills of exchange and promissory notes.

103. Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the company is liable, such bill of exchange, note, instrument, or security must, subject to any special order of the court made to the contrary, be produced to the official receiver, chairman of a meeting or liquidator, as the case may be, and be marked by him before the proof can be admitted either for voting or for any purpose.

Time for lodging proofs.

104. A proof intended to be used in a winding up by the court at the first meeting of creditors or at an adjournment thereof shall be lodged with the official receiver not later than the time mentioned for that purpose in the notice convening the meeting or adjourned meeting.

Transmission of proofs to liquidator.

105. Where a liquidator is appointed in a winding up by the court, all proofs of debts that have been received by the official receiver shall be handed over to the liquidator, but the official receiver shall first make a list of such proofs, and take a receipt thereon from the liquidator for such proofs.

Admission and Rejection of Proofs, and Appeal to the Court.

Notice to creditors to prove.

106. Subject to the provisions of the Acts, and unless otherwise ordered by the court, the liquidator, in any winding up may from time to time fix a certain day, which shall be not less than fourteen days from the date of the notice, on or before which the creditors of the company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved, and the liquidator shall give notice in writing of the day so fixed by advertisement in such newspaper as he shall consider convenient, and in a winding up by the court to every person mentioned in the statement of affairs as a creditor, and who has not proved his debt, and in

any other winding up to the last known address or place of abode of each person who, to the knowledge of the liquidator, claims to be a creditor of the company and whose claim has not been admitted.

107. The liquidator shall examine every proof of debt lodged with him, and the grounds of the debt, and in writing admit or reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof he shall state in writing to the creditor the grounds of the rejection. Examination of proof.
Form 65.

108. If a creditor or contributory is dissatisfied with the decision of the liquidator in respect of a proof, the court may, on the application of the creditor or contributory, reverse or vary the decision; but, subject to the power of the court to extend the time, no application to reverse or vary the decision of the liquidator in a winding up by the court rejecting a proof sent to him by a creditor, or person claiming to be a creditor, shall be entertained, unless notice of the application is given before the expiration of twenty-one days from the date of the service of the notice of rejection. Appeal by creditor.

109. If the liquidator thinks that a proof has been improperly admitted, the court may, on the application of the liquidator, after notice to the creditor who made the proof expunge the proof or reduce its amount. Expunging at instance of liquidator.

110. The court may also expunge or reduce a proof upon the application of a creditor or contributory if the liquidator declines to interfere in the matter. Expunging at instance of creditor.

111. For the purpose of any of his duties in relation to proofs, the liquidator, in a winding up by the court, may administer oaths and take affidavits. Oaths.

112. In a winding up by the court the official receiver, before the appointment of a liquidator, shall have all the powers of a liquidator with respect to the examination, admission, and rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal. Official receiver's powers.

113. In a winding up by the court the official receiver, where no other liquidator is appointed, shall, before payment of a dividend, file all proofs tendered in the winding up, with a list thereof, distinguishing in such list the proofs which were wholly or partly admitted, and the proofs which were wholly or partly rejected. Filing proofs of official receiver.

114. Every liquidator in a winding up by the court other than the official receiver shall on the first day of every month, with the registrar a certified list of all proofs, if any, received by him during the month next preceding, distinguishing in such lists the proofs admitted, those rejected, and such as stand over for further consideration; and, in the case of proofs admitted or rejected, he shall cause the proofs to be filed with the registrar. Proofs to be filed.
Form 66.

115. The liquidator in a winding up by the court, including the official receiver when he is liquidator, shall, within three days after receiving notice from a creditor of his intention to appeal Procedure where creditor appeals.
Form 66.

against a decision rejecting a proof, file such proof with the registrar, with a memorandum thereon of his disallowance thereof.

Time of dealing with proofs by official receiver.

116. Subject to the power of the court to extend the time in a winding up by the court, the official receiver as liquidator, not later than fourteen days from the latest date specified in the notice of his intention to declare a dividend as the time within which such proofs must be lodged, shall in writing either admit or reject wholly, or in part, every proof lodged with him, or require further evidence in support of it.

Time for dealing with proofs by liquidator.

117. Subject to the power of the court to extend the time, the liquidator in a winding up by the court, other than the official receiver, within twenty-eight days after receiving a proof, which has not previously been dealt with, shall in writing either admit or reject it wholly or in part, or require further evidence in support of it. Provided that where the liquidator has given notice of his intention to declare a dividend, he shall within fourteen days after the date mentioned in the notice as the latest date up to which proofs must be lodged, examine, and in writing admit or reject, or require further evidence in support of, every proof which has not been already dealt with, and shall give notice of his decision, rejecting a proof wholly or in part, to the creditors affected thereby. Where a creditor's proof has been admitted the notice of dividend shall be a sufficient notification of the admission.

Costs of appeals from decisions as to proofs.

118. The official receiver shall in no case be personally liable for costs in relation to an appeal from his decision rejecting any proof wholly or in part.

Dividends in a Winding up by the Court.

Dividends to creditors.

119.—(1) Not more than two months before declaring a dividend the liquidator in a winding up by the court, shall give notice of his intention to do so to the Board of Trade in order that the same may be gazetted, and at the same time to such of the creditors mentioned in the statement of affairs as have not proved their debts. Such notice shall specify the latest date up to which proofs must be lodged, which shall not be less than fourteen days from the date of such notice.

Form 67.

(2) Where any creditor, after the date mentioned in the notice of intention to declare a dividend as the latest date up to which proofs may be lodged, appeals against the decision of the liquidator rejecting a proof, notice of appeal shall, subject to the power of the court to extend the time in special cases, be given within seven days from the date of the notice of the decision against which the appeal is made, and the liquidator may in such case make provision for the dividend upon such proof, and the probable costs of such appeal in the event of the proof being admitted. Where no notice of appeal has been given within the time specified in this rule, the liquidator shall

exclude all proofs which have been rejected from participation in the dividend.

(3) Immediately after the expiration of the time fixed by this Form 71. rule for appealing against the decision of the liquidator he shall proceed to declare a dividend, and shall give notice to the Board of Trade (in order that the same may be gazetted), and shall also send a notice of dividend to each creditor whose proof has been admitted.

(4) If it becomes necessary, in the opinion of the liquidator and the Committee of Inspection, to postpone the declaration of the dividend beyond the limit of two months, the liquidator shall give a fresh notice of his intention to declare a dividend to the Board of Trade in order that the same may be gazetted; but it shall not be necessary for the liquidator to give a fresh notice to such of the creditors mentioned in the statement of affairs as have not proved their debts. In all other respects the same procedure shall follow the fresh notice as would have followed the original notice.

(5) Upon the declaration of a dividend the liquidator shall forthwith transmit to the Board of Trade a list of the proofs filed with the registrar under Rule 114, which list shall be in the Form 68 or 69 in the Appendix as the case may be. If the winding up is in a court other than the High Court the list shall, on payment of the prescribed fee, be examined by the registrar with the proofs tendered for filing and if found correct shall be certified by the registrar. If the winding up is in the High Court the liquidator shall, if so required by the Board of Trade, transmit to the Board of Trade office copies of all lists of proofs filed by him up to the date of the declaration of the dividend. Forms 68 and 69.

(6) Dividends may at the request and risk of the person to whom they are payable be transmitted to him by post.

(7) If a person to whom dividends are payable desires that Form 72. they shall be paid to some other person he may lodge with the liquidator a document in the Form 72 which shall be a sufficient authority for payment of the dividend to the person therein named.

120. Every order by which the liquidator in a winding up by Return of the court is authorised to make a return to contributories of the capital to company, shall, unless the court shall otherwise direct, contain or have appended thereto a schedule or list (which the liquidator shall prepare) setting out in a tabular form the full names and Forms 73 and 74. addresses of the persons to whom the return is to be paid, and the amount of money payable to each person, and particulars of the transfers of shares (if any) which have been made by, or the variations in the list of contributories which have arisen since the date of the settlement of the list of contributories. The schedule or list shall be in the Form 74 with such variations as circumstances shall require.

General Meetings of Creditors and Contributories in a Winding up by the Court.

Meetings for ascertaining wishes of creditors and contributories.

121. Subject to the provisions of the Acts and to the control of the court, the liquidator may from time to time, when he thinks expedient, summon, hold and conduct meetings of the creditors or contributories for the purpose of ascertaining their wishes in all matters relating to the winding up.

Meetings subsequent to the first meetings.

122. Meetings subsequent to the first meetings of creditors and contributories shall be summoned by sending notices to them. The notice to each creditor shall be sent to the address given in his proof, or if he has not proved to the address given in the statement of affairs of the company, or to such other address as may be known to the person summoning the meeting. The notice to each contributory shall be sent to the address mentioned in the company's books as the address of such contributory, or to such other address as may be known to the person summoning the meeting.

Form 75.

Notices of general meetings.

123. The notices of general meetings to be issued to creditors and contributories by the official receiver or liquidator shall, where no special time is prescribed, be sent off not less than seven days before the day appointed for the meeting.

Form 75.

Proof of notice.

124. A certificate by the official receiver or other officer of the court, or by the clerk of any such person, or an affidavit by the liquidator, or his solicitor, or the clerk of either of such persons, that the notice of any meeting has been duly posted, shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed.

Forms 76 and 77.

Costs of calling meeting.

125. The costs of summoning a meeting of creditors at the instance of any person other than the official receiver or liquidator, shall be paid by the person at whose instance it is summoned, who shall before the meeting is summoned deposit with the official receiver or liquidator (as the case may be) such sum as may be required by the official receiver or liquidator as security for the payment of such costs. The costs of summoning such meeting of creditors including all disbursements for printing, stationery, postage, and the hire of room, shall be calculated at the following rates for each creditor to whom notice is required to be sent: two shillings per creditor for the first 20 creditors, one shilling per creditor for the next 30 creditors, sixpence per creditor for any number of creditors after the first 50. The said costs shall be repaid out of the assets of the company if the court shall by order, or if the creditors or contributories (as the case may be) shall by resolution so direct.

Chairman of meeting.

126. Where a meeting is summoned by the official receiver, he, or some one nominated by him, shall be chairman of the meeting. At every other meeting of creditors and contributories (other than meetings to which the schedule of the Act of 1890 applies) the chairman shall be such person as the meeting by resolution shall appoint,

Form 79.

127. At a meeting of creditors a resolution shall be deemed Ordinary to be passed when a majority in number and value of the resolution of creditors present, personally or by proxy, and voting on the resolution, have voted in favour of the resolution, and at a contributories meeting of the contributories a resolution shall be deemed to be passed when a majority in number and value of the contributories present, personally or by proxy, and voting on the resolution, have voted in favour of the resolution, the value of the contributories being determined according to the number of votes conferred on each contributory by the regulations of the company.

128. The official receiver, or, as the case may be, the liquidator, shall file with the registrar, a copy, certified by him, of every resolution of a meeting of creditors or contributories. Copy of resolution to be filed.

129. Where a meeting of creditors or contributories is summoned by notice, the proceedings and resolutions at the meeting shall, unless the court otherwise orders, be valid, notwithstanding that some creditors or contributories may not have received the notice sent to them. Non-reception of notice by a creditor.

130. Where a meeting of creditors is adjourned the adjourned meeting shall be held at the same place as the original place of meeting. Adjournment. Form 78. meeting, unless in the resolution for adjournment another place is specified, or unless the court otherwise orders.

131. In calculating a quorum at a creditors' meeting, those persons only who are entitled to vote shall be reckoned. Quorum.

Proxies in a Winding up by the Court.

132.—(1) A proxy intended to be used at the first meeting of creditors or contributories, or an adjournment thereof, shall be lodged with the official receiver not later than the time mentioned for that purpose in the notice convening the meeting or the adjourned meeting, which time shall be not earlier than twelve o'clock at noon of the day but one before, nor later than twelve o'clock at noon of the day before the day appointed for such meeting, unless the court otherwise directs. Proxies. Forms 80 and 81.

(2) In every other case a proxy shall be lodged with the official receiver or liquidator not later than four o'clock in the afternoon of the day before the meeting or adjourned meeting at which it is to be used.

(3) No person shall be appointed a general or special proxy who is a minor.

(4) Where a limited company is a creditor, any person who is duly authorised under the seal of the company to act generally on behalf of the company at meetings of creditors and contributories and to appoint himself or any other person to be the company's proxy, may fill in and sign the form of proxy on the company's behalf and appoint himself to be the company's proxy, and a proxy so filled in and signed by such a person shall be received and dealt with as the proxy of the company.

Use of
proxies by
deputy.

133. Where an official receiver who holds any proxies cannot attend the meeting for which they are given, he may, in writing, depute some person under his official control to use the proxies on his behalf, and in such manner as he may direct.

Filling in
where
creditor
blind or in-
capable.

134. The proxy of a creditor blind or incapable of writing may be accepted, if such creditor has attached his signature or mark thereto in the presence of a witness, who shall add to his signature his description and residence; provided that all insertions in the proxy are in the handwriting of the witness, and such witness shall have certified at the foot of the proxy that all such insertions have been made by him at the request of the creditor and in his presence before he attached his signature or mark.

Attendance and Appearance of Parties.

Attend-
ance at
proceed-
ings.

135.—(1) Every person for the time being on the list of contributories of the company, and every person whose proof has been admitted shall be at liberty, at his own expense, to attend proceedings, and shall be entitled, upon payment of the costs occasioned thereby, to have notice of all such proceedings as he shall by written request desire to have notice of; but if the court shall be of opinion that the attendance of any such person upon any proceedings has occasioned any additional costs which ought not to be borne by the funds of the company, it may direct such costs, or a gross sum in lieu thereof, to be paid by such person; and such person shall not be entitled to attend any further proceedings until he has paid the same.

(2) The court may from time to time appoint any one or more of the creditors or contributories to represent before the court, at the expense of the company, all or any class of the creditors or contributories, upon any question or in relation to any proceedings before the court, and may remove the person so appointed. If more than one person is appointed under this rule to represent one class, the persons appointed shall employ the same solicitor to represent them.

(3) No creditor or contributory shall be entitled to attend any proceedings in chambers unless and until he has entered in a book, to be kept by the registrar for that purpose, his name and address, and the name and address of his solicitor (if any) and upon any change of his address or of his solicitor, his new address, and the name and address of his new solicitor.

Attend-
ance of
liquida-
tor's
solicitor.

136. Where the attendance of the liquidator's solicitor is required on any proceeding in court or chambers, the liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his solicitor, or the court directs him to attend.

Liquidator and Committee of Inspection in a Winding up by the Court.

Remunera-
tion.

137.—(1) The remuneration of a liquidator, unless the court shall otherwise order, shall be fixed by the Committee of Inspec-

tion, and shall be in the nature of a commission or percentage of which one part shall be payable on the amount realised, after deducting the sums (if any) paid to secured creditors (other than debenture holders) out of the proceeds of their securities, and the other part on the amount distributed in dividend.

(2) If the Board of Trade is of opinion that the remuneration of a liquidator as fixed by the Committee of Inspection is unnecessarily large, the Board of Trade may apply to the court, and thereupon the court shall fix the amount of the remuneration of the liquidator.

(3) If there is no Committee of Inspection the remuneration of the liquidator shall, unless the court shall otherwise order, be fixed by the scale of fees and percentages for the time being payable on realisations and distributions by the official receiver as liquidator.

138. Except as provided by the Acts or rules, a liquidator shall not under any circumstances whatever, make any arrangement for, or accept from any solicitor, auctioneer, or any other person connected with the company of which he is liquidator, or who is employed in or in connection with the winding up of the company, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration to which under the Acts and rules he is entitled as liquidator, nor shall he make any arrangement for giving up, or give up any part of such remuneration to any such solicitor, auctioneer, or other person. Limit of remuneration.

139. Neither the liquidator nor any member of the Committee of Inspection of a company shall, while acting as liquidator or member of such committee, except by leave of the court, either directly or indirectly, by himself or any partner, clerk, agent, or servant, become purchaser of any part of the company's assets. Any such purchase made contrary to the provisions of this rule may be set aside by the court on the application of the Board of Trade or any creditor or contributory, and the court may make such order as to costs as the court shall think fit. Dealings with assets.

140. Where the liquidator carries on the business of the company, he shall not, without the express sanction of the court, purchase goods for the carrying on of such business from any person whose connection with the liquidator is of such a nature as would result in the liquidator obtaining any portion of the profit (if any) arising out of the transaction. Restriction on purchase of goods by a liquidator.

141. No member of a Committee of Inspection shall, except under and with the sanction of the court, directly or indirectly, by himself or any employer, partner, clerk, agent, or servant, be entitled to derive any profit from any transaction arising out of the winding up, or to receive out of the assets any payment for services rendered by him in connection with the administration of the assets, or for any goods supplied by him to the liquidator for or on account of the company. If it appears to the Board of Trade that any profit or payment has been made contrary to the provisions of this rule, they may disallow such payment or re- Committee not to make profit.

cover such profit, as the case may be, on the audit of the liquidator's accounts.

Costs of obtaining sanction of court.

142. In any case in which the sanction of the court is obtained under the two last preceding rules, the cost of obtaining such sanction shall be borne by the person in whose interest such sanction is obtained, and shall not be payable out of the company's assets.

Sanction of payments to committee.

143. Where the sanction of the court to a payment to a member of a Committee of Inspection for services rendered by him in connection with the administration of the company's assets is obtained, the order of the court shall specify the nature of the services, and such sanction shall only be given where the service performed is of a special nature. Except by the express sanction of the court no remuneration shall, under any circumstances, be paid to a member of a committee for services rendered by him in the discharge of the duties attaching to his office as a member of such committee.

Discharge of costs before assets handed to liquidator.

144.—(1) Where a liquidator is appointed by the court, and has notified his appointment to the registrar of Joint Stock Companies, and given security to the Board of Trade, the official receiver shall forthwith put the liquidator into possession of all property of the company of which the official receiver may have custody; provided that such liquidator shall have, before the assets are handed over to him by the official receiver, discharged any balance due to the official receiver on account of fees, costs, and charges properly incurred by him, and on account of any advances properly made by him in respect of the company, together with interest on such advances at the rate of four pounds per centum per annum; and the liquidator shall pay all fees, costs, and charges of the official receiver which may not have been discharged by the liquidator before being put into possession of the property of the company, and whether incurred before or after he has been put into such possession.

(2) The official receiver shall be deemed to have a lien upon the company's assets until such balance shall have been paid and the other liabilities shall have been discharged.

(3) It shall be the duty of the official receiver, if so requested by the liquidator, to communicate to the liquidator all such information respecting the estate and affairs of the company as may be necessary or conducive to the due discharge of the duties of the liquidator.

Resignation of liquidator.

145. A liquidator who desires to resign his office shall summon separate meetings of the creditors and contributories of the company to decide whether or not the resignation shall be accepted. If the creditors and contributories by ordinary resolutions both agree to accept the resignation of the liquidator, he shall file with the registrar a memorandum of his resignation, and shall send notice thereof to the official receiver, and the resignation shall thereupon take effect. In any other case the liquidator shall report to the court the result of the meetings

and shall send a report to the official receiver, and thereupon the court may, upon the application of the liquidator or the official receiver, determine whether or not the resignation of the liquidator shall be accepted, and may give such directions and make such orders as in the opinion of the court shall be necessary.

146. If a receiving order in bankruptcy is made against the liquidator, he shall thereby vacate his office, and for the purposes of the application of the Acts and rules shall be deemed to have been removed. Office of liquidator vacated by his insolvency.

Payments Into and Out of a Bank.

147. All payments out of the company's liquidation account shall be made in such manner as the Board of Trade may from time to time direct. Payments out of Bank of England.

148.—(1) Where the liquidator in a winding up by the court is authorised to have a special bank account, he shall forthwith pay all moneys received by him into that account to the credit of the liquidator of the company. All payments out shall be made by cheque payable to order, and every cheque shall have marked or written on the face of it the name of the company, and shall be signed by the liquidator, and shall be countersigned by at least one member of the Committee of Inspection, and by such other person, if any, as the Committee of Inspection may appoint. Special bank account. Forms 82 and 83.

(2) Where application is made to the Board of Trade to authorise the liquidator in a winding up by the court to make his payments into and out of a special bank account, the Board of Trade may grant such authorisation for such time and on such terms as they may think fit, and may at any time order the account to be closed if they are of opinion that the account is no longer required for the purposes mentioned in the application.

Books.

149. The official receiver, until a liquidator is appointed by the court, and thereafter the liquidator, shall keep a book to be called the "record book" in which he shall record all minutes, all proceedings had and resolutions passed at any meeting of creditors or contributories, or of the Committee of Inspection, and all such matters as may be necessary to give a correct view of his administration of the company's affairs, but he shall not be bound to insert in the "record book" any document of a confidential nature (such as the opinion of counsel on any matter affecting the interest of the creditors or contributories), nor need he exhibit such document to any person other than a member of the Committee of Inspection, or the official receiver, or the Board of Trade. Record book.

150.—(1) The official receiver, until a liquidator is appointed by the court, and thereafter the liquidator, shall keep a book to Cash book.

be called the "cash book" (which shall be in such form as the Board of Trade may from time to time direct) in which he shall (subject to the provisions of the rules as to trading accounts) enter from day to day the receipts and payments made by him.

(2) The liquidator shall submit the record book and cash book, together with any other requisite books and vouchers, to the Committee of Inspection (if any) when required, and not less than once every three months.

Investment of Funds.

Invest-
ment of
assets in
securities,
and real-
isation of
securities.

Forms 84
and 85.

151.—(1) Where the Committee of Inspection are of opinion that any part of the cash balance standing to the credit of the account of a company should be invested, they shall sign a certificate and request, and the liquidator shall transmit such certificate and request to the Board of Trade.

(2) Where the Committee of Inspection are of opinion that it is advisable to sell any of the securities in which the moneys of the company's assets are invested they shall sign a certificate and request to that effect, and the liquidator shall transmit such certificate and request to the Board of Trade.

(3) Where in a winding up by the court there is no Committee of Inspection, or in a voluntary winding up, or winding up under the supervision of the court, if in the opinion of the liquidator a case has arisen under section 17 of the Act of 1890 for an investment of funds of the company or a sale of securities in which the company's funds have been invested, the liquidator shall sign and transmit to the Board of Trade a certificate of the facts on which his opinion is founded, and a request to the Board of Trade to make the investment mentioned in the certificate, and the Board of Trade may thereupon, if it thinks fit, invest or sell the whole or any part of the said funds or securities, as provided in the said section, and the said certificate and request shall be a sufficient authority to the Board of Trade for the said investment or sale.

Accounts and Audit in a Winding up by the Court.

Audit of
cash book.
Form 86.

Board of
Trade
audit of
liqui-
dator's ac-
counts.

152. The Committee of Inspection shall not less than once every three months audit the liquidator's cash book and certify therein under their hands the day on which the said book was audited.

153.—(1) The liquidator shall, at the expiration of six months from the date of the winding-up order, and at the expiration of every succeeding six months thereafter until his release, transmit to the Board of Trade a copy of the cash book for such period in duplicate, together with the necessary vouchers and copies of the certificates of audit by the Committee of Inspection. He shall also forward with the first accounts a summary of the company's statement of affairs, showing thereon in red ink the amounts realised, and explaining the cause of the non-realisation

of such assets as may be unrealised. The liquidator shall also at the end of every six months forward to the Board of Trade, with his accounts, a report upon the position of the liquidation of the company in such form as the Board of Trade may direct.

(2) When the assets of the company have been fully realised and distributed, the liquidator shall forthwith send in his accounts to the Board of Trade, although the six months may not have expired.

(3) The accounts sent in by the liquidator shall be verified by him by affidavit.

154.—(1) Where the liquidator carries on the business of the company, he shall keep a distinct account of the trading, and shall incorporate in the cash book the total weekly amount of the receipts and payments on such trading account. Liquidator's account of carrying on business.

(2) The trading account shall from time to time, and not less than once in every month, be verified by affidavit, and the liquidator shall thereupon submit such account to the Committee of Inspection (if any), or such member thereof as may be appointed by the committee for that purpose, who shall examine and certify the same. Forms 87 and 88.

155. When the liquidator's account has been audited, the Board of Trade shall certify the fact upon the account, and thereupon the duplicate copy, bearing a like certificate, shall be filed with the registrar. Copy of accounts to be filed.

156.—(1) The liquidator shall transmit to the Board of Trade with his accounts a summary of such accounts in such form as the Board of Trade may from time to time direct, and, on the approval of such summary by the Board of Trade, shall forthwith obtain, prepare, and transmit to the Board of Trade so many printed copies thereof, duly stamped for transmission by post, and addressed to the creditors and contributories, as may be required for transmitting such summary to each creditor and contributory. Summary of accounts.

(2) The cost of printing and posting such copies shall be a charge upon the assets of the company.

157. Where a liquidator has not since the date of his appointment or since the last audit of his accounts, as the case may be, received or paid any sum of money on account of the assets of the company, he shall, at the time when he is required to transmit his accounts to the Board of Trade, forward to the Board of Trade an affidavit of no receipts or payments. Affidavit of no receipts.

158.—(1) Upon a liquidator resigning, or being released or removed from his office, he shall deliver over to the official receiver, or, as the case may be, to the new liquidator, all books kept by him, and all other books, documents, papers, and accounts in his possession relating to the office of liquidator. The release of a liquidator shall not take effect unless and until he has delivered over to the official receiver, or as the case may be to the new liquidator, all the books, papers, documents, and ac- Proceedings on resignation, etc., of liquidator.

counts which he is by this rule required to deliver on his release.

Disposal of books.

(2) The Board of Trade may, at any time during the progress of the liquidation, on the application of the liquidator or the official receiver, direct that such of the books, papers, and documents of the company or of the liquidator as are no longer required for the purpose of the liquidation, may be sold, destroyed, or otherwise disposed of.

Expenses of sales.

159. Where property forming part of a company's assets is sold by the liquidator through an auctioneer or other agent, the gross proceeds of the sale shall be paid over by such auctioneer or agent, and the charges and expenses connected with the sale shall afterwards be paid to such auctioneer or agent, on the production of the necessary certificate of the taxing officer. Every liquidator by whom such auctioneer or agent is employed, shall, unless the court otherwise orders, be accountable for the proceeds of every such sale.

Taxation of Costs.

Taxation of costs payable by or to official receiver or liquidator or by company.

160. Every solicitor, manager, accountant, auctioneer, broker or other person employed by an official receiver or liquidator in a winding up by the court shall on request by the official receiver or liquidator (to be made a sufficient time before the declaration of a dividend) deliver his bill of costs or charges to the official receiver or liquidator for the purpose of taxation; and if he fails to do so within the time stated in the request, or such extended time as the court may allow, the liquidator shall declare and distribute the dividend without regard to such person's claim, and subject to any order of the court the claim shall be forfeited. The request by the official receiver or liquidator shall be in the Form No. 89.

Form 89.

Notice of appointment.

161. Where a bill of costs or charges in any winding up has been lodged with the taxing officer, he shall give notice of an appointment to tax the same, in a winding up by the court to the official receiver, and in every winding up to the liquidator, and to the person to or by whom the bill or charges is to be paid (as the case may be).

Lodgment of bill.

162. The bill of charges, if incurred in a winding up by the court prior to the appointment of a liquidator, shall be lodged with the official receiver, and if incurred after the appointment of a liquidator, shall be lodged with the liquidator. The official receiver or the liquidator, as the case may be, shall lodge the bill or charges with the proper taxing officer.

Copy of the bill to be furnished.

163. Every person whose bill or charges in a winding up by the court is or are to be taxed shall, on application either of the official receiver or the liquidator, furnish a copy of his bill of charges so to be taxed, on payment at the rate of fourpence per folio, which payment shall be charged on the assets of the company. The official receiver shall call the attention of the liqui-

dator to any items which, in his opinion, ought to be disallowed or reduced, and may attend or be represented on the taxation.

164. Where any party to, or person affected by, any proceeding desires to make an application for an order that he be allowed his costs, or any part of them, incident to such proceeding, and such application is not made at the time of the proceeding:—

- (1) Such party or person shall serve notice of his intended application on the official receiver in a winding up by the court and in every winding up on the liquidator.
- (2) The official receiver (if any) and liquidator may appear on such application and object thereto.
- (3) No cost of or incident to such application shall be allowed to the applicant, unless the court is satisfied that the application could not have been made at the time of the proceeding.

165. Upon the taxation of any bill of costs, charges, or expenses being completed, the taxing officer shall issue to the person presenting such bill for taxation his allowance or certificate of taxation. The bill of costs, charges, and expenses, together with the allowance or certificate, shall be filed with the registrar.

166. Where the bill or charges of any solicitor, manager, accountant, auctioneer, broker, or other person employed by the official receiver or liquidator, is or are payable out of the assets of the company, a certificate in writing, signed by the official receiver or liquidator, as the case may be, shall on the taxation be produced to the taxing officer setting forth whether any, and if so what, special terms of remuneration have been agreed to, and in the case of the bill of costs of a solicitor, a copy of the resolution or other authority sanctioning the employment.

167. In a County Court all costs properly incurred in a winding up by the court shall be allowed on the Lower Scale in Appendix N. to the Rules of the Supreme Court, and costs shall be taxed by the registrar in person.

168.—(1) Where any bill of costs, charges, fees or disbursements which are payable out of the assets of the company to any solicitor, manager, accountant, auctioneer, broker or other person has been taxed by a registrar of a court other than the High Court, the Board of Trade may require the taxation to be reviewed by the taxing officer of the High Court.

(2) In any case in which the Board of Trade require such a review of taxation as is above mentioned they shall give notice to the person whose bill has been taxed, and shall apply to the taxing officer of the High Court to appoint a time for the review of such taxation and thereupon such taxing officer shall appoint a time for the review of, and shall review, such taxation and certify the result thereof. The Board of Trade shall give to the person whose bill of costs is to be reviewed notice of the time appointed for the review.

Applica-
tions for
costs.

Certifi-
cate of
taxation.
Form 90.

Certificate
of employ-
ment.

Scale of
costs in a
County
Court, and
taxation.

Review of
taxation at
instance of
Board of
Trade.

(3) Where any such review of taxation as is above mentioned is required to be made by the taxing officer of the High Court, the registrar whose taxation is to be reviewed shall forward to the said taxing officer the bill which is required to be reviewed.

(4) The Board of Trade may appear upon the review of the taxation; and if, upon the review of the taxation, the bill is allowed at a lower sum than the sum allowed on the original taxation, the amount disallowed shall (if the bill has been paid) be repaid to the official receiver or the liquidator, or other person entitled thereto. The certificate of the taxing officer shall in every case of a review by him under this rule be a sufficient authority to entitle the person to whom the amount disallowed ought to be repaid to demand such amount from the person liable to repay the same.

(5) The costs of and incidental to the review shall be paid out of the assets of the company or otherwise as the taxing officer or the court may direct; provided that the costs of the attendance of a principal shall not be allowed if in the opinion of the taxing officer he could have been sufficiently represented by his London agent.

Costs and Expenses Payable out of the Assets of the Company.

Liquidator's charges. 169.—(1) Where a liquidator or special manager in a winding up by the court receives remuneration for his services as such, no payment shall be allowed on his accounts in respect of the performance by any other person of the ordinary duties which are required by statute or rules to be performed by himself.

(2) Where a liquidator is a solicitor he may contract that the remuneration for his services as liquidator shall include all professional services.

Costs payable out of the assets. 170.—(1) The assets of a company in a winding up by the court, remaining after payment of the fees and actual expenses incurred in realising or getting in the assets, shall, subject to any order of the court, and, as regards a winding up to which the provisions of the Stannaries Act, 1887, apply, subject to that Act, be liable to the following payments, which shall be made in the following order of priority, namely:—

First.—The taxed costs of the petition, including the taxed costs of any person appearing on the petition whose costs are allowed by the court.

Next.—The remuneration of the special manager (if any).

Next.—The costs and expenses of any person who makes or concurs in making, the company's statement of affairs.

Next.—The taxed charges of any shorthand writer appointed to take an examination. Provided that where the shorthand writer is appointed at the instance of the official receiver the cost of the shorthand notes shall be deemed to be an expense incurred by the official receiver in getting in and realising the assets of the company.

Next.—The liquidator's necessary disbursements, other than actual expenses of realisation heretofore provided for.

Next.—The costs of any person properly employed by the liquidator with the sanction of the Committee of Inspection.

Next.—The remuneration of the liquidator.

Next.—The actual out-of-pocket expenses necessarily incurred by the Committee of Inspection, subject to the approval of the Board of Trade.

(2) No payments in respect of bills or charges of solicitors, Costs. managers, accountants, auctioneers, brokers, or other persons, other than payments for costs and expenses incurred and sanctioned under Rule 57, and payments of bills which have been taxed and allowed under orders made for the taxation thereof, shall be allowed out of the assets of the company without proof that the same have been considered and allowed by the registrar. The taxing officer shall satisfy himself before passing such bills or charges that the employment of the solicitor or other person in respect of the matters mentioned in the bills or charges has been duly sanctioned :¹ provided that the official receiver when acting as liquidator, may, without taxation, pay and allow the costs and charges of any other person other than a solicitor, employed by him, where such costs and charges are within the scale usually allowed by the court and do not exceed the sum of £2 : provided always that the Board of Trade may require such costs or charges to be taxed by the taxing officer.

(3) Nothing contained in this rule shall apply to or affect costs which, in the course of legal proceedings by or against a company which is being wound up by the court, are ordered by the court in which such proceedings are pending or a judge thereof to be paid by the company or the liquidator, or the rights of the person to whom such costs are payable.

Statements by Liquidator to the Registrar of Joint Stock Companies.

171. The winding up of a company shall, for the purposes of section 15 of the Act of 1890, be deemed to be concluded :—

- (a) In the case of a company wound up by order of the court, at the date on which the order dissolving the company has been reported by the liquidator to the registrar of Joint Stock Companies, or at the date of the order of the Board of Trade releasing the liquidator pursuant to section 22 of the Act of 1890.
- (b) In the case of a company wound up voluntarily, or under the supervision of the court, at the date of the dissolution of the company, unless at such date any funds or assets of the company remain unclaimed or undistributed in the hands or under the control of the liquidator, or any person

Conclusion of winding up.

¹ This proviso was added in March, 1906.

who has acted as liquidator, in which case the winding up shall not be deemed to be concluded until such funds or assets have either been distributed or paid into the Companies Liquidation Account at the Bank of England.

Times for sending liquidator's statements, and regulations applicable thereto. 172. The statements with respect to the proceedings in and position of a liquidation of a company, the winding up of which is not concluded within a year after its commencement, shall be sent to the registrar of Joint Stock Companies twice in every year as follows:—

(1) The first statement, commencing at the date when a liquidator was first appointed and brought down to the end of twelve months from the commencement of the winding up, shall be sent within thirty days from the expiration of such twelve months, or within such extended period as the Board of Trade may sanction, and the subsequent statements shall be sent at intervals of half a year, each statement being brought down to the end of the half-year for which it is sent.

Form 92. (2) Subject to the next succeeding rule, Form No. 92, with such variations as circumstances may require, shall be used, and the directions specified in the form shall (unless the Board of Trade otherwise direct) be observed in reference to every statement.

Form 93. (3) Every statement shall be sent in duplicate, and shall be verified by an affidavit in the Form No. 93, with such variations as circumstances may require.

Affidavit of no receipts or payments. 173. Where a liquidator has not during any period for which a statement has to be sent received or paid any money on account of the company, he shall at the period when he is required to transmit his statement, send to the registrar of Joint Stock Companies the prescribed statement in the Form No. 92, in duplicate, containing the particulars therein required with respect to the proceedings in and position of the liquidation, and with such statement shall also send an affidavit of no receipts or payments in the Form No. 93.

Forms 92 and 93.

Unclaimed Funds and Undistributed Assets in the Hands of a Liquidator.

Payment of undistributed and unclaimed money into Companies Liquidation Account. 174.—(1) All money in the hands or under the control of a liquidator of a company representing unclaimed dividends, which for six months from the date when the dividend became payable have remained in the hands or under the control of the liquidator, shall forthwith, on the expiration of the six months, be paid into the Companies Liquidation Account.

(2) All other money in the hands or under the control of a liquidator of a company, representing unclaimed or undistributed assets, which under subsection 3 of section 15 of the Act of 1890 the liquidator is to pay into the Companies Liquidation Account, shall be ascertained as on the date to which

the statement of receipts and payments sent in to the registrar of Joint Stock Companies is brought down, and the amount to be paid to the Companies Liquidation Account shall be the minimum balance of such money which the liquidator has had in his hands or under his control during the six months immediately preceding the date to which the statement is brought down, less such part (if any) thereof as the Board of Trade may authorise him to retain for the immediate purposes of the liquidation. Such amount shall be paid into the Companies Liquidation Account within fourteen days from the date to which the statement of account is brought down.

(3) Notwithstanding anything in this rule, any moneys representing unclaimed or undistributed assets or dividends in the hands of the liquidator at the date of the dissolution of the company shall forthwith be paid by him into the Companies Liquidation Account.

(4) A liquidator whose duty it is to pay into the Companies Liquidation Account at the Bank of England money representing unclaimed or undistributed assets of the company, shall apply in such manner as the Board of Trade shall direct to the Board of Trade for a paying-in order, which paying-in order shall be an authority to the Bank of England to receive the payment.

(5) Money at the credit of the account of the official liquidator of a company with the Bank of England shall be deemed to be money under the control of such official liquidator, and when such money has remained unclaimed or undistributed for six months after the date of receipt it shall be transferred to the Companies Liquidation Account, and the official liquidator and master of the Chancery Division of the High Court attached to the judge in whose chambers the winding up is proceeding shall draw and sign such cheques or orders as may be necessary for the transfer of the money. An application to the Board of Trade for payment out of moneys so transferred shall be signed by the liquidator and counter-signed by the said master.

(6) Money invested or deposited at interest by a liquidator shall be deemed to be money under his control, and when such money forms part of the minimum balance payable into the Companies Liquidation Account pursuant to clause (2) of this rule, the liquidator shall realise the investment or withdraw the deposit, and shall pay the proceeds into the Companies Liquidation Account, provided that where the money is invested in Government securities, such securities may, with the permission of the Board of Trade, be transferred to the control of the Board of Trade instead of being forthwith realised and the proceeds thereof paid into the Companies Liquidation Account. In the latter case, if and when the money represented by the securities is required wholly or in part for the purposes of the liquidation, the Board of Trade may realise the securities wholly or in part

and pay the proceeds of realisation into the Companies Liquidation Account and deal with the same in the same way as other moneys paid into the said account may be dealt with.

Liquidator to furnish information to Board of Trade.

Form 97.

175. Every person who has acted as liquidator of any company, whether the liquidation has been concluded or not, shall furnish to the Board of Trade particulars of any money in his hands or under his control representing unclaimed or undistributed assets of the company and such other particulars as the Board of Trade may require for the purpose of ascertaining or getting in any money payable into the Companies Liquidation Account at the Bank of England. The Board of Trade may require such particulars to be verified by affidavit.

Board of Trade may call for verified accounts.

Forms 92 and 93.

176.—(1) The Board of Trade may at any time order any such person to submit to them an account verified by affidavit of the sums received and paid by him as liquidator of the company and may direct and enforce an audit of the account.

(2) For the purposes of section 15 of the Act of 1890, and the rules, the court shall have, and, at the instance of the Board of Trade, may exercise all the powers conferred by the Bankruptcy Act, 1883, with respect to the discovery and realisation of the property of a debtor, and the provisions of Part I. of that Act with respect thereto shall, with any necessary modification, apply to proceedings under section 15 of the Act of 1890.

Application to the court for enforcing an account and getting in money.

177. An application by the Board of Trade for the purpose of ascertaining and getting in money payable into the Bank of England pursuant to section 15 of the Act of 1890, shall be made by motion, and where the winding up is by or under the supervision of the court shall be made to and dealt with by the judge, and in a voluntary winding up shall be made to and dealt with by the judge of the High Court.

Application for payment out by person entitled.

178. An application by a person claiming to be entitled to any money paid into the Bank of England in pursuance of section 15 of the Act of 1890, shall be made in such form and manner as the Board of Trade may from time to time direct, and shall, unless the Board of Trade otherwise directs, be accompanied by the certificate of the liquidator that the person claiming is entitled and such further evidence as the Board of Trade may direct.

Application by liquidator for payment out.

179. A liquidator who requires to make payments out of money paid into the Bank of England in pursuance of section 15 of the Act of 1890, either by way of distribution or in respect of the cost and expenses of the proceedings, shall apply in such form and manner as the Board of Trade may direct, and the Board of Trade may thereupon either make an order for payment to the liquidator of the sum required by him for the purposes aforesaid, or may direct cheques to be issued to the liquidator for transmission to the persons to whom the payments are to be made.

Release of Liquidator in a Winding up by the Court.

180.—(1) A liquidator in a winding up by the court before making application to the Board of Trade for his release, shall give notice of his intention so to do to all the creditors who have proved their debts, and to all the contributories, and shall send with the notice a summary of his receipts and payments as liquidator.

Proceedings for release of liquidator. Forms 98, 99 and 100.

(2) When the Board of Trade have granted to a liquidator his release, a notice of the order granting the release shall be gazetted. The liquidator shall provide the requisite stamp fee for the *Gazette*, which he may charge against the company's assets.

Official Receivers and Board of Trade.

181.—(1) Judicial notice shall be taken of the appointment of the official receivers appointed by the Board of Trade.

Appointment.

(2) When the Board of Trade appoints any officer to act as deputy for or in the place of an official receiver, notice thereof shall be given by letter to the court to which such official receiver is or was attached. The letter shall specify the duration of such acting appointment.

(3) Any person so appointed shall, during his tenure of office, have all the status, rights, and powers, and be subject to all the liabilities of an official receiver.

182. Where an official receiver is removed from his office by the Board of Trade, notice of the order removing him shall be communicated by letter to the court to which the official receiver was attached.

Removal.

183. The Board of Trade may, by general or special directions determine what acts or duties of the official receiver in relation to the winding up of companies are to be performed by him in person, and in what cases he may discharge his functions through the agency of his clerks or other persons in his regular employ, or under his official control.

Personal performance of duties.

184. An assistant official receiver, appointed by the Board of Trade, shall be an officer of the court, like the official receiver to whom he is assistant, and subject to the directions of the Board of Trade, he may represent the official receiver in all proceedings in court, or in any administrative or other matter. Judicial notice shall be taken of the appointment of an assistant official receiver, and he may be removed in the same manner as is provided in the case of an official receiver.

Assistant official receivers.

185. In the absence of the official receiver any officer of the Board of Trade duly authorised for the purpose by the Board of Trade, and any clerk of the official receiver duly authorised by him in writing, may by leave of the court act on behalf of the official receiver, and take part for him in any public or other examination and in any unopposed application to the court.

Power of officers of Board of Trade and official receiver's clerks in certain cases to act for official receivers.

Duties where no assets.

186. Where a company against which a winding-up order has been made has no available assets, the official receiver shall not be required to incur any expense in relation to the winding up without the express directions of the Board of Trade.

Accounting by official receiver.

187.—(1) Where a liquidator is appointed by the court in a winding up by the court, the official receiver shall account to the liquidator.

(2) If the liquidator is dissatisfied with the account or any part thereof, he may report the matter to the Board of Trade, who shall take such action (if any) thereon as it may deem expedient.

(3) The provisions of these rules as to liquidators and their accounts shall not apply to the official receiver when he is liquidator, but he shall account in such manner as the Board of Trade may from time to time direct.

Official receiver to act for Board of Trade where no Committee of Inspection.

188. Where there is no Committee of Inspection any functions of the Committee of Inspection which devolve on the Board of Trade may, subject to the directions of the Board, be exercised by the official receiver.

Appeals from Board of Trade and official receiver.

189. An appeal in the High Court against a decision of the Board of Trade, or an appeal to the court from an act or decision of the official receiver acting otherwise than as liquidator of a company, shall be brought within twenty-one days from the time when the decision or act appealed against is done, pronounced, or made.

Applications under S. 25 (2) of Act of 1890.

190.—(1) An application by the Board of Trade to the court to examine on oath the liquidator or any other person pursuant to section 25 of the Act of 1890, shall be made *ex parte*, and shall be supported by a report to the court filed with the registrar, stating the circumstances in which the application is made.

(2) The report may be signed by any person duly authorised to sign documents on behalf of the Board of Trade; and shall for the purposes of such application be *prima facie* evidence of the statements therein contained.

Books to be Kept, and Returns made, by Officers of Courts.

Books to be kept by officers of courts.

191.—(1) In the High Court the registrar and in the district registries of the High Court at Liverpool and Manchester respectively the district registrars of the High Court, and in a court other than the High Court, the registrar shall keep books according to the forms in the Appendix, and the particulars given under the different heads in such books shall be entered forthwith after each proceeding has been concluded.

Forms 101 and 102.

(2) The officers of the courts whose duty it is to keep the books prescribed by these rules shall make and transmit to the Board of Trade such extracts from their books, and shall furnish the Board of Trade with such information and returns as the Board of Trade may from time to time require.

Gazetting in a Winding up by the Court.

192.—(1) All notices subsequent to the making by the court of a Gazetting winding-up order in pursuance of the Acts or the rules requiring notices. publication in the *London Gazette* shall be gazetted by the Board of Trade. Form 103.

(2) Where any winding-up order is amended, and also in any case in which any matter which has been gazetted has been amended or altered, or in which a matter has been wrongly or inaccurately gazetted, the Board of Trade shall re-gazette such order or matter with the necessary amendments and alterations in the prescribed form, at the expense of the company's assets, or otherwise as the Board of Trade may direct.

193.—(1) Whenever the *London Gazette* contains any advertisement relating to any winding-up proceedings the official receiver or liquidator as the case may be shall file with the proceedings a memorandum referring to and giving the date of the advertisement. Form 104.

(2) In the case of an advertisement in a local paper, the official receiver or liquidator as the case may be shall keep a copy of the paper, and a memorandum referring to and giving the date of the advertisement shall be placed on the file.

(3) For this purpose one copy of each local paper in which any advertisement relating to any winding-up proceeding in the court is inserted, shall be left with the official receiver or liquidator as the case may be by the person who inserts the advertisement.

(4) A memorandum under this rule shall be *prima facie* evidence that the advertisement to which it refers was duly inserted in the issue of the *Gazette* or newspaper mentioned in it.

Arrests and Commitments.

194. A warrant of arrest, or any other warrant issued under the provisions of the Acts and rules, may be addressed to such officer of the court, or to such high bailiff or officer of any County Court, whether such County Court has jurisdiction to wind up a company or not, as the court may in each case direct. To whom warrants may be addressed.

195. Where the court issues a warrant for the arrest of a person under any of the provisions of the Acts or rules, the person (to be named in the warrant of arrest) to which the person shall be committed shall, unless the court shall otherwise order, be the prison used by the court in cases of orders of commitment made in the exercise by the court of its ordinary jurisdiction. which person arrested on warrant is to be taken.

196. Where a warrant for the arrest of a person has been issued by a court other than the High Court under any of the provisions of the Acts and rules, the high bailiff of the court, or other officer of the court to whom the warrant is addressed, may send the warrant of arrest to the registrar of any other court (other than the High Court) within the ordinary jurisdiction of the court. Execution of warrants of arrest outside ordinary jurisdiction of court.

Forms 105
and 106.

or district of which such person shall then be or be believed to be, with a warrant annexed thereto under the hand of the high bailiff or officer and seal of the court from which the warrant originally issued, requiring execution of the warrant by the court to which it is so sent; and the registrar of the last mentioned court shall seal or stamp the warrant with the seal of his court, and issue the same to the high bailiff or other proper officer of his court, with an endorsement thereon in the Form 106; and thereupon such last mentioned high bailiff or officer may, and shall in all respects, execute the said warrant according to the requirements thereof, and all constables and peace officers shall aid and assist within their respective districts in the execution of such warrant.

Prison to
which a
person ar-
rested is to
be con-
veyed, and
production
and cus-
tody of
persons
arrested.

197.—(1) Where a person is arrested under a warrant of commitment issued under any of the provisions of the Acts and rules, other than sections 115 and 113 of the Companies Act, 1862, and Rule 69 of the Rules, he shall be forthwith conveyed in custody of the bailiff or officer apprehending him to the prison of the court within the ordinary jurisdiction of which he is apprehended, and kept therein for the time mentioned in the warrant of commitment, unless sooner discharged by the order of the court which originally issued the warrant of commitment, or otherwise by law.

(2) Where a person is arrested under a warrant, issued under section 115 or section 113 of the Companies Act, 1862, or under Rule 69 of the Rules, he shall be forthwith conveyed in custody of the bailiff or officer apprehending him to the prison of the court within the ordinary jurisdiction of which he is apprehended; and the governor or keeper of such prison shall produce such person before the court as it may from time to time direct, and shall safely keep him until such time as the court shall otherwise order, or such person shall be otherwise discharged by law. Provided that where any such person is conveyed to a prison other than the prison used by the court which originally issued the warrant in cases of orders of commitment made by such court in the exercise of its ordinary jurisdiction, the court may by order direct such person to be transferred to such last mentioned prison; and on receipt of such order the governor or keeper of the prison to which such person has been conveyed, shall cause such person to be conveyed in proper custody to the prison mentioned in such order, and the governor or keeper of such last mentioned prison shall, on production of such order and of the warrant of arrest, receive such person, and shall produce him before the court, as it may from time to time direct, and shall safely keep him until such time as the court shall otherwise order, or such person shall be otherwise discharged by law.

Miscellaneous Matters.

Board of
Trade.

198. The Board of Trade may from time to time issue general orders or regulations for the purpose of regulating any matters

under the Act or the rules which are of an administrative and not of a judicial character. Judicial notice shall be taken of any general orders or regulations which are printed by the King's printers, and purport to be issued under the authority of the Board of Trade.

199. The court may, in any case in which it shall see fit, extend or abridge the time appointed by the rules or fixed by any order of the court for doing any act or taking any proceeding.

200.—(1) No proceedings under the Acts or the rules shall be invalidated by any formal defect or by any irregularity, unless the court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that court.

(2) No defect or irregularity in the appointment or election of a receiver, liquidator, or member of a Committee of Inspection shall vitiate any act done by him in good faith.

201. In all proceedings in or before the court, or any judge, registrar, or officer thereof, or over which the court has jurisdiction under the Acts and rules, where no other provision is made by the Acts or rules, the practice procedure and regulations shall, unless the court otherwise in any special case directs, in the High Court be in accordance with the rules of the Supreme Court and practice of the High Court, and in a Palatine Court and County Court in accordance, as far as practicable, with the existing rules and practice of the court in proceedings for the administration of assets by the court.

202. The provisions of Rule 2 of the Rules of the Supreme Court, 1887, relating to petitions in the district registries of Liverpool and Manchester, shall apply to petitions presented in those registries under the Acts and rules.

203. The rules and orders specified in the schedule hereto and the forms thereby prescribed are hereby revoked and annulled to the extent mentioned in such schedule, provided that such revocation and annulment shall not prejudice or affect anything done or suffered before the date on which these rules come into operation under and rule or order which is hereby revoked and annulled and that no rule or practice which was annulled or repealed by the said rules and orders shall be revived by reason of the revocation and annulment hereby effected.

204. These rules may be cited as the Companies (Winding-up) Rules, 1903. They shall come into operation on the 1st day of January, 1904.

(Signed) HALSBURY, C.

I concur,

G. W. BALFOUR,
President of the Board of Trade.

The 18th of December, 1903.

SCHEDULE.

Orders and Rules Revoked and Annulled.

1. The General Order of the Court of Chancery of the 11th of November, 1862 (except as to winding-up matters commenced before the 1st day of January, 1891).
2. The Companies (Winding-up) Rules, 1890.
3. The Companies (Winding-up) Rules of 30th April, 1891.
4. The Companies (Winding-up) Rules, 1892.
5. The Companies (Winding-up) Rules, August, 1892.
6. The Companies (Winding-up) Rule, 3rd December, 1892.
7. The Companies (Winding-up) Rules, 29th March, 1893.
8. The Companies (Winding-up) Rules, 2nd April, 1895.
9. The Companies (Winding-up) Rule, November, 1895.
10. The Companies (Winding-up) Rule, 19th May, 1896.
11. The Companies (Winding-up) Rules, 1899.
12. The Companies (Winding-up) Rule, 1902.

INDEX.

A.

- ABSTRACT OF RECEIPTS AND PAYMENTS,**
before statutory meeting, to appear in report, 272.
of receiver or manager in possession, to be filed, 283.
- ACCESS**
to books, etc., of company, auditors to have, 270.
of banking company with branches outside Europe, 165.
- ACCOUNTS**
of company to be accessible to auditors, 235.
auditors to report to shareholders on, 235.
to show payments of interest out of capital, 259.
to be evidence of certain facts in winding up, 63.
disposal of, on dissolution of company, 63.
provisions in Table A (revised), as to, 117, 118.
of banking company having branches outside Europe, 165.
of liquidators, to be evidence in winding up, 63.
disposal of, on dissolution of company, 63.
to be audited, 193.
of receipts, etc., in winding up, Board of Trade to keep, 192.
- ACCUMULATED PROFITS,**
capital may be reduced by return of, 168.
amount thereof to be stated in statement of account, 169.
- ACTION,**
restrictions on beginning, after winding up commenced, 37
88.
or proceeding with, 37, 84, 88.
liquidator may bring or defend, in company's name, 40.
limited company may be ordered to give security for costs
when plaintiff in, 30.
company not registered as required cannot be plaintiff in,
91.
but may be defendant in, 91.
- ADDRESS**
of company, to be at its registered office, 18.
established outside, and trading within United King-
dom, 279,
of member, provisions in Table A (revised), as to, 119.

ADDRESS (*continued*)

- of each auditor, director, signatory of memorandum of association, and vendor to company to be stated in prospectus, 252.
- director to be stated in report, 214.

ADJOURNMENT

- of hearing petition to wind up, 37.
- of committee meeting, provisions as to, in Table A (revised), 116.
- of general meeting, provisions as to, in Table A (revised), 107, 108.
- of statutory meeting, 228.

ADJUSTMENT,

- final, of rights of contributories *inter se*, 17, 18.
- where company unregistered, 88.
- may be made by court, 46.
- court may make calls for, 43.

ADMINISTRATION

- of estate of deceased contributory, 44.
- powers of liquidator as to, 40.

ADVANCES ON CURRENT ACCOUNT,

- deposit of debentures to secure, 267.

ADVERTISEMENT

- of closing of register to be in local newspaper, 14.
- notice of resolution to wind up voluntarily to be by, 55.
- of general meeting when winding up concluded to be by, 59.
- prospectus published in newspaper as, what to contain, 224.

AFFAIRS OF COMPANY,

- annual statement of, to be filed, 272.
- where company is established outside, and trades within United Kingdom, 279.
- examination into, by Board of Trade Inspector, 25, 26.

AGENTS

- of company to produce books, etc., to inspectors, 26.
- to answer questions of inspectors, 27.
- company may appoint abroad to contract, etc., under company's seal, 140.
- duration of authority of such, how to be limited, 141.
- resident in United Kingdom to be appointed by foreign companies trading in United Kingdom, 279.

ALLOTMENT,

- where prospectus is issued, obligations before making (of shares), 218.
- effect of non-compliance with such obligations, 219.

ALLOTMENT (*continued*)

- of shares equal to minimum subscription to be made before
company commences business, 220.
- return of particulars of, to be filed with registrar, 221.
- what particulars to appear in prospectus, 253.
- in return, 221.
- when consideration for, not wholly cash, 221.
- penalty on director, etc., for failure to make return of,
221.
- where no prospectus is issued, obligations before making
(of shares and debentures), 251.
- not applicable to private companies, 252.
- of shares and debentures, may be simultaneous, 256.

ALLOWANCE,

- payment of, when lawful, on offer of shares to public, 221,
258.
- on shares privately offered, 258.
- total sum paid by way of, to be stated in summary, 257.
- paid in consideration of subscribing for debentures, to be
registered, 262.

ALTERATION

- of capital, provisions in Table A (revised), as to, 104, 105.
- by way of re-organisation, 282.
- of form of constitution of company, how made, 175.
- requires confirmation by court, 175.
- of memorandum of association, how made, 5.
- restrictions upon, 5.
- of name of company, how made, 6.
- not to affect rights, etc., of company, 9.
- of name of director, etc., to be notified to registrar, 21.
- where foreign company trades in England, 280.
- of objects specified in memorandum of association, 175.
- purposes for which court will sanction, 175.
- order confirming, etc., to be registered, 176.
- of provisions of letters patent or act regulating company,
82, 83, 84, 158.
- of registered office to be notified to registrar, 18.
- of regulations of company, to be by special resolution, 22.
- of status of members in winding up, when void, 63.
- of tables and forms in schedules, Board of Trade may make,
31.
- fraudulent, of books, etc., to be a misdemeanour, 68.

AMOUNT,

- nominal, of share, at least 5 per cent., to be payable on
application, 219.
- provisions as to, in Table A (revised), 96.

AMOUNT (*continued*)

- of proposed capital to appear in memorandum of association, 3.
- and in articles of association in some cases, 6.
- of minimum subscription, to be subscribed before allotment, 218.
- provisions as to, in Table A (revised), 94.
- where no invitation to subscribe is given to public, 251.
- paid, etc., on shares of company to be entered in register, 11.
- paid up on shares, company seeking registration under Part VII. must state, 78.
- paid up on shares of company may vary, 152.

ANNUAL LIST AND SUMMARY,

- when to be made, 12.
- what to contain, 12, 234, 257, 272.
- where capital is reduced by return of profits, 169.
- particulars as to share warrants in, 155.
- where company established outside, trades within United Kingdom, 279.
- to be signed by manager or secretary, 234.
- copy of, to be forwarded to registrar, 12.
- exception where company formed not for gain, 152.

APPEAL

- from order in winding up, to what court, etc., 50.
- when notice of, to be given, 50.
- by creditor or contributory against arrangement with creditors, 58.
- by person aggrieved by decision of liquidator, 195.
- by company struck off register as defunct, 171.

APPLICATION

- by creditors in voluntary winding up for appointment of liquidator instead of or as well as company's liquidator, 275.
- costs of such application, 275.
- for declaring dissolution of company void, 277.
- for deferring date of dissolution of company, 277.
- for directions, liquidator or contributory may make, 58.
- for examination of company's affairs, members may make, 25.
- must be supported by evidence of *bona fides*, 26.
- for meeting of creditors to consider arrangement, 159.
- for order for rectification of register, 15.
- confirming reduction of capital, 146.
- for registration of memorandum, etc., of association to be accompanied by list of directors, 217.
- for relief of non-filing of contract, 214.

APPLICATION (*continued*)

- for restoration to register of company struck off as defunct,
171, 236.
- for stay in action against creditor or contributory, 84.
 - where company unregistered, 88.
- for stay of winding-up proceedings, 38.
- for winding up, to be by petition, 36.
 - who may make, 36, 276.
- of penalties, court imposing, may direct, 276.

APPLICATION FOR SHARES,

- amount payable on, to be at least 5 per cent. of nominal
amount thereof, 219.
 - where public not invited to subscribe, 251.
- avoidance of irregular allotment by person making, 219.
- return of application money in such case, 219.

APPOINTMENT

- of auditors, to be made at annual meetings, 234.
 - or in default by Board of Trade, 234.
 - first, directors may make before statutory meeting, 235.
 - directors may make, on casual vacancy, 235.
- of director, restrictions upon, 216.
- of director or manager, valid though defect subsequently
discovered, 29.
- of inspectors of Board of Trade to examine company's
affairs, 25.
- of other inspectors to examine company's affairs, 26.
- of liquidator, court may make provisionally, 37.
 - court may give creditors power to make, 57.
- in voluntary winding up, by company, 55.
 - by court, on due cause shown, 59.
 - on creditors' application, 274.
- by company in general meeting on vacancy occurring, 59.
- of manager, provisions of Table A (revised), as to, 111.

ARBITRATION,

- company may agree to refer matter in dispute to, 31.
- provisions of Railway Companies Arbitration Act, 1859, to
apply to, 32.
- for settling price payable to dissentient member, 67.

ARRANGEMENT

- as to powers of liquidators, 57.
- with creditors, power of liquidators to make, 64.
 - when binding in voluntary winding up, 57.
 - right of appeal against, 58.
- court may call meeting to decide as to, 159.
 - even though company is not being wound up, 282.
 - and, may sanction if carried by three-fourths
majority, 159.

ARRANGEMENT (*continued*)

- with contributories or debtors, liquidators may make, 65.
- with dissentients from proposed alteration of company's objects, 176.
- by liquidators for sale of property of company to another company, 65.

ARREST

- of contributory, when court may order, 48.
- of person suspected of having property of company, 47.

ART,

- company formed to promote, may only hold two acres without licence, 10.
- may be licensed to omit "limited," 151.

ARTICLES OF ASSOCIATION

- compulsory where company limited by guarantee or unlimited, 6.
- regulations to be prescribed by, 6.
- regulations in, may be altered by special resolution, 22.
- copy of special resolution to be embodied in, 26.
- to be printed, stamped, attested and registered, 7.
- application for registration of, to be accompanied by list of consenting directors, 217.
- member entitled to copy of, for one shilling, 9.
- bind members as though they had signed, etc., 7.
- to appoint as directors only such as have filed consent to act, 216.
- may authorise use of foreign official seal, 141.
- where company formed not for gain, Board of Trade may insert special provisions in, 151.
- substitution for, by company registered but not formed under the Companies Acts, 82.

ASSETS OF COMPANY,

- particulars of, to appear in annual summary, 272.
- may be charged with expenses of inspectors into company's affairs, 26.
- capital unrepresented by available, may be cancelled, 160.
- absence of any, not to prevent making of winding-up order, 276.

ASSETS OF COMPANY IN WINDING UP,

- liability of members, past and present, to contribute to, 17, 32.
- in case of company limited by guarantee, 38, 57.
- in case of unregistered company, 88.
- liability to contribute to, to be specialty debt, 32.
- to be applied in discharge of company's liabilities, 42.
- liquidators to take necessary steps to distribute, 41.
- powers of liquidators to arrange questions as to, 65.

- ASSETS OF COMPANY IN WINDING UP** (*continued*),
costs, etc., of voluntary winding up to be first charge on, 60.
costs of prosecuting guilty directors, etc., may be charged on, 69.
- ASSIGNEE**
of bankrupt contributory, when deemed a contributory, 33.
in unregistered company, 88.
of chose in action of company may sue or be sued, 64.
- ASSOCIATION**
exceeding certain number illegal unless registered, 1.
not for gain may be licensed to omit "limited" after name, 151.
certificate of incorporation to be evidence of due registration of, 216.
- ASSURANCE COMPANY,**
when exempt from making statement in Form D, 282.
- ATTACHMENT**
of effects of company, void after winding up commenced, 67.
- AUDIT OF LIQUIDATOR'S ACCOUNTS**
by Board of Trade, regulations as to, 193.
- AUDITORS,**
to be appointed at annual general meetings by company, 234.
or by Board of Trade on company's default, 234.
notice of proposed auditors to be given, 270.
remuneration of, to be fixed at general meeting by company, 235.
directors or officers not to be appointed as, 235.
first, directors *may* appoint before statutory meeting, 235.
and fix their remuneration, 235.
names and addresses of to appear in prospectus, 253.
to certify correctness of certain particulars in preliminary report, 228.
provisions as to vacancies amongst, 235.
to have access to accounts, books, etc., of company, 270.
in case of banking company with branches outside Europe, 165.
may require information from directors, etc., of company, 235.
to certify on balance sheet compliance with requirements, 235.
to report to shareholders on accounts and balance sheets, 235.

AUSTRALIA

is colony within meaning of Companies (Colonial Registers)
Act, 1883, 284.

AUTHENTICATION

of notices, etc., may be under hand of authorised officer of
company, 27.
of particulars required from company registered under
Part VII., 79.

B.**BALANCE SHEET,**

statement in form of, to appear in annual summary, 272.
what to contain, 257, 272.
to be signed by directors, 270.
to be audited, 272.
auditors to report upon, 270.
auditors' report to be attached to, 270.
right of shareholders to copy of, 270.
penalty for non-compliance with above requirements,
271.
provisions in Table A (revised), as to, 106, 118.
of banking companies, by whom to be signed, 166.
making of false statements, etc., in, a misdemeanour, 68,
237.
may state on notes that liability thereon is limited, 164.
balance sheets of, by whom to be signed, 166.
with branches beyond limits of Europe, provisions as to
access of auditors to accounts of, 165.

BANKING COMPANY,

if of more than ten members, must be registered, 1.
if limited, to publish statement in Form D, 20, 123.
not to have liability limited in respect of its notes, 164.

BANKRUPTCY

of contributory, effect of, 33.
in unregistered company, 88.
[See also Table A (revised), 98, 113.]

BEARER,

fully paid-up shares may be issued in name of, 153.
dividends on which may be paid by coupon, etc., 153.
of share warrant entitled to shares specified therein, 153.
and may transfer them by delivery, 153.
may be registered as member on giving up warrant,
154.
when may be deemed a member of company, 154.
not to be thereby qualified as director, etc., 154.
fraudulent personation of, to be felony, 155.
provisions in Table A (revised), as to, 102, 103.

BENEFIT SOCIETY

to publish statement in Form D, 20, 123.

BILL OF EXCHANGE,

when deemed to have been made, etc., by company, 21.
penalties for signing, where name of company does not
appear, 19.
liquidator may draw, etc., in name of company, 40.

BILL OF SALE,

instrument of charge similar to, on company's property to
be registered, 260.

BOARD OF TRADE,

sanction of, required for alteration of name of company, 6.
or of letters patent of company formed thereunder, 82.
licence of, required by certain companies desirous to hold
land, 10.

form of such licence, 136. *
or to omit "limited" from its name, 151.
revocation of such licence, 283.

may appoint inspectors to examine company's affairs, 25.
such inspectors to report on examination to, 26.
may require applicants for such examination to give
security for costs, 26.
may direct how costs of examination to be paid, 26.
power of, to alter forms, etc., in first schedule of Com-
panies Act, 1862, 31.
to make regulations as to striking off defunct
companies, 171.
to appoint auditor where company fails to do so, 234.
with respect to constitution, fees, etc., of registration
office, 71, 72, 73.
report of to Parliament on company matters, annual, 285.

BOOK DEBTS OF COMPANY,

charge on, to be void unless registered, 260.
deposit of negotiable instrument to secure payment of, not
to require registration, 260.

BOOKS OF COMPANY,

to contain minutes of all company's proceedings, 29.
to be accessible to auditors, 270.
exception in case of branches of banking company
situate outside Europe, 165.
to be produced to inspectors examining company's affairs, 26.
in winding up, to be kept by liquidator, 193.
court may order delivery of, to liquidator, 42.
inspection of, by creditors, etc., 64.
to be evidence of certain facts, 63.
fraudulent destruction, alteration, etc., of, 64.
how to be disposed of, on dissolution of company, 63.
provisions in Table A (revised), as to, 112, 117, 118.

- BOOKS OF LIQUIDATORS,**
to be evidence of certain facts, 63.
disposition of, on dissolution of company, 63.
- BORROWING POWERS OF COMPANY,**
restrictions on exercise of, 220.
where no issue of prospectus inviting public to subscribe,
251.
penalty for illegal exercise of, 220.
for forming fund under Forged Transfers Act, 210.
- BREACH OF DUTY OR TRUST,**
relief to director liable for, 278.
- BROKERAGE,**
payment of proper, legal, 222.
- BUSINESS OF COMPANY,**
restrictions on commencement of, 220.
where no issue of prospectus inviting public to sub-
scribe, 251.
do not apply to private company, 252.
penalty for illegal commencement of, 220.
certificate of registrar of right to commence, 220.
such certificate to be conclusive evidence of right, 220.
company failing to commence or carry on for one year may
be wound up, 84.
or struck off register as defunct, 160.
in case of unregistered company, 85.
alteration of memorandum of association for the better
carrying on of, 176.
company transacting, abroad may have seal for use abroad,
140.
certain companies transacting, in colonies may keep
colonial registers, 172.
principal place of, to fix place of registration of unregis-
tered company for winding up, 85.
company not to carry on, after winding up begins, 55.
carrying on of, by liquidator in winding up, 40.
provisions in Table A (revised), as to, 106, 107, 111.

C.

- CALLS ON SHARES,**
amount of, made, received, etc., to appear in summary, 12.
amount of, may be varied in different shares, 152.
time of payment of, may be varied in different shares, 152.
provisions as to, in Table A (revised), 99, 104.
such power to extend to unpaid capital increased by return
of profits, 158.
when shareholder may compel retention of money to re-
present future, 158.

CALLS ON SHARES (*continued*),

- in action for, against member special matter need not be alleged, 30.
- liability to satisfy, to be specialty debt, 32.
- court may make, in winding up by or under supervision of court, 43, 62, 189.
- liquidator may make, in voluntary winding up, 56.

CANCELLATION,

- effect of surrender of share warrant for, 154.
- of capital lost or not represented by available assets, 160.
- of unissued shares, memorandum of association may sanction, 161.
- not to be subject to certain provisions of Companies Act, 1867, 162.

CAPITAL,

- amount of, to be stated in prospectus, 223.
- and in memorandum of association, 3.
- may be increased by issue of new shares, 5.
- notice of increase of, beyond registered capital to be given to registrar within fifteen days, 15.
- may be consolidated and divided into shares of larger amount, 5.
- or of smaller amount, 150.
- notice of conversion or division of, into larger shares to be given to registrar, 13.
- statement of division of, into smaller shares to appear in subsequent memorandum of association, 151.
- companies seeking registration under Part VII. to furnish certain particulars as to, 78, 79.
- power to reduce, by special resolution sanctioned by court, 146.
- including paid-up capital, 174.
- minute showing certain particulars of, as reduced, to be approved by court, 148.
- minute and order to be registered, 148, 168.
- company with reduced, to add "and reduced" to end of name, 146.
- but court may dispense with "and reduced" in certain cases, 161.
- court may make order to reduce, on terms, 161.
- creditors may object to reduction of, 147.
- when court may disregard creditors' objections, 161.
- position of creditor ignorant of reduction of, 149.
- may be cancelled if lost, 160.
- or unrepresented by available assets, 160.
- in excess of wants of company may be paid off, 160.
- reduction of paid-up, need not affect liability on shares, 160.
- uncalled, charge on, to be registered, 260.

CAPITAL (*continued*),

- unissued, may be cancelled so as to reduce, 161.
- accumulated profits may be returned so as to reduce, 168.
- reserve may be provided, 164.
- provisions as to increase, division, and reduction of, in Table A (revised), 94, 104, 105.
- re-organisation of, by special resolution confirmed by order of court, 282.
- copy of such order to be filed, 282.
- payment of interest out of, during construction certain cases allowed in, 259.
- but only when authorised by articles and special resolution, 259.
- and sanctioned by Board of Trade, 259.
- and not to operate as reduction of, 259.
- use of, forbidden, for buying out dissentient members, 176.
- or for paying commission, except as provided, 222.

CAPITAL OF COMPANY LIMITED BY GUARANTEE

- not to be divided into shares unless memorandum of association so provides and specifies its amount, 237.
- number of shares into which divided, to be stated in memorandum of association, 4, 237.
- effect of winding-up order on, 57.

CASTING VOTE,

- provisions in Table A (revised), as to, 108, 115, 116.

CERTIFICATE

- of auditors to be annexed to certain particulars in first report, 228.
- of incorporation to be issued on registration, 8.
 - to be altered on company changing name, 6.
 - to be furnished to any applicant, 72.
 - to be conclusive as to compliance with requisitions as to registration, 216.
 - of company registering under Part VII., 80.
 - of banking company existing before 1862, 79.
- of limitation of liability to be issued on registration, 8.
- of registration of charge, etc., to be given by registrar, 263.
 - to be conclusive as to compliance with requisitions, 263.
 - copy of, to be endorsed on debentures affected, 263.
 - of order confirming alteration of objects, 177.
 - to be conclusive as to compliance with requisitions, 177.
 - of order, etc., reducing capital, 148.
 - to be conclusive as to compliance with requisitions, 148.
- of shares (or debentures), to be issued within two months of allotment or transfer, 256.
 - to be evidence of title thereto, 14.
 - provisions in Table A (revised), as to, 94, 95, 98, 102.

CERTIFIED COPY

of charter, etc., of foreign company trading in United Kingdom to be registered, 279.
 what is, under Board of Trade regulations,
 of documents kept by registrar, to be supplied, 72.
 registered under Companies Acts to be evidence, 162.

CHAIRMAN OF MEETING,

provisions in Table A (revised), as to, 107, 108.
 declaration of, as to voting conclusive if poll not demanded, 23.
 person elected by members present to be, unless company's regulations provide otherwise, 24.

CHANGE

of form of constitution of company, how made, 175.
 requires sanction of court, 175.
 of name of company, how made, 6.
 not to affect rights, etc., of company, 9.
 of name of director, etc., to be notified to registrar, 21.
 in case of foreign companies trading in England, 279.
 of objects specified in memorandum of association, 175.
 purposes for which court will sanction, 175.
 order confirming, etc., to be registered, 176.
 of registered office to be notified to registrar, 18.
 of status of members in winding up, when void, 63.

CHARGES,

copy of deeds creating, to be kept for inspection at company's office, 264.
 debt due on, to be stated in annual summary, 234.
 floating, on property of company to be registered, 260.
 created within three months of winding up to be invalid, 266.
 unless company solvent when charge created, 266.
 register of, affecting company's property to be kept, 20, 261.
 to be open to inspection, 20, 264, 269.
 when judge may order inspection of, 20.
 index to, to be kept, 233.
 memorandum of satisfaction may be entered on, 233.
 registration of, when required, 260.
 effect of failure to comply with, 260.
 comprising foreign property, regulations as to, 260.
 certificate of, to be given, 263.
compulsory on company, 263.
permissible for any person interested, 263.
 court may grant relief for omission in, 263.
 penalty for failure to effect, 233.

CHARITY,

- restrictions on holding of land by company formed to promote, 10.
- form of such licence, 134.
- company formed to promote, may be licensed to omit "limited," 151.

CHOSE IN ACTION,

- disposition of, after winding up commenced, void, 63.
- assignee of, under Company Acts may sue in own name, 64.
- effect of registration of company under Part VII. on, 81.

CIRCULAR

- inviting further subscriptions from existing members, etc., 225, 254.
- offering shares, etc., to public for subscription, is a "prospectus," 288.

CLAIMS IN WINDING UP

- of all descriptions may be proved, 64.
- power of liquidators to compromise, 64, 65, 159.

CLOSING

- of register, power of company as to, 14.
- of transfer books, provisions in Table A (revised), as to, 98.

COLONIAL REGISTER,

- applies to Australia, 284.
- certain companies may keep, 172.
- notice of place of keeping to be given to registrar, 172.
- to be deemed part of company's register, 173.
- to be *prima facie* evidence of contents, 173.
- regulations as to entries in, 173.
- company may discontinue or regulate keeping of, 173, 174.

COMMENCEMENT OF ACT

- of 1862, on 2nd November, 1862, 1.
- of 1900, on 1st January, 1901, 239.
- of 1907, on 1st July, 1908 (except sections 14 and 15), 285.

COMMENCEMENT OF BUSINESS OF COMPANY,

- restrictions on, 220.
- penalty for illegal, 220.
- registrar's certificate authorising, 220.

COMMENCEMENT OF WINDING UP,

- by court, to date from presentation of petition, 37.
- voluntary, from passing of resolution to wind up, 54.
- company not to carry on business after, 55.

COMMISSION

- for underwriting shares, payment of when lawful, 221.
- on offer of shares to public, 258.
- on shares privately offered, 258.

COMMISSION (*continued*),

- sum paid by way of, to be stated in summary, 257.
- and prospectus, 222, 254.
- in consideration of subscribing for debentures, to be registered, 262.

COMMISSIONERS

- for taking evidence in winding up, who are, 52.

COMMITTEE

- of creditors, delegation of appointment, etc., of liquidators to, 57.
- of directors, provisions in Table A (revised), as to, 115, 116.
- of inspection, application to court to appoint, 182, 275.
- of whom to consist, 185.
- of inspection, regulations as to meetings of, 186.
- Board of Trade to act in default of, 187.

COMMON SEAL,

- incorporated company to have, 8, 81.
- company's name to be legibly engraved on, 19.
- company may issue bearer warrants under, 153.
- company may execute deeds under, 156.
- liquidator may use, in winding up, 40.
- seal of company's attorney abroad, when effective as, 25.
- for use abroad, certain companies may prepare official, 140.
- what to appear on face of, 140.
- agent affixing, to add date of sealing, 141.

COMPANY [in general],

- constitution of, minimum number to be seven, 2, 22.
- who are or become members of, 10.
- limitation of liability of members of, 3.
- incorporation of, 8.
- registration of, in certain cases compulsory, 91.
- consequences of default in such cases, 91.
- power of, to change its name, 6.
- to issue shares, some fully paid up, others not, 142.
- to make contracts under seal, etc., 146.
- to execute deeds abroad by attorney, 25.
- to refer disputed matters to arbitration, 31.
- to compensate for losses arising from forged transfers, 208, 209.
- to re-organise its capital, 282.
- winding up of, under what circumstances, 34, 54.
- when deemed insolvent, 34.
- to operate as stay of actions, etc., against, 37, 67.
- power of liquidator in, 40.
- costs of, to be a charge on the property, 46, 60.
- effect of, on status and property of, 55, 56.
- arrangements with creditors and others in, 57, 64, 65.
- for purposes of reconstruction, 65.

COMPANY [in general] (*continued*),

dissolution of, after winding up, 28, 37.

as being defunct, 170, 236.

member of another company, may appoint person to represent it at general meetings, 273.

COMPANY, ESTABLISHED OUTSIDE UNITED KINGDOM,

within one month of setting up business in United Kingdom to file with registrar copy of articles, etc., 279.

list of directors, 279.

name of agent resident in United Kingdom, 279.

notice of any change in above, 279.

service of notice on named agent to be service on, 279.

statement of affairs to be filed by, annually, 279.

using "limited," further requirements as to, 280.

penalty for failure to comply with above requirements, 280.

COMPANY LIMITED BY SHARES,

what is, 3.

what memorandum of association of, must contain, 3.

may have articles of association, 6.

otherwise Table A applies, 7.

name of, to appear on offices, notices, etc., 19.

where established outside United Kingdom, 280.

but may in certain cases be licensed to omit "limited," 151.

registering under Part VII. to add "limited" to name, 80.

liability of directors in, may be unlimited, 143, 145.

power of, to reduce capital, 146.

power of, to convert, divide or increase capital, 5.

may subdivide capital into smaller shares, 150.

may issue share warrants to bearer, 153.

COMPANY LIMITED BY GUARANTEE,

what is, 4.

what memorandum of association must contain, 4.

must have articles of association, 6.

form of memorandum and articles of association of, 125, 126.

name of, to appear on offices, notices, etc., 19

but may in certain cases be licensed to omit "limited," 151.

not to have capital divided into shares unless memorandum of association so provides, etc., 237.

effect on capital of, of winding-up order, 38.

of voluntary winding up, 57.

COMPANY, PRIVATE,

definition of, 281.

may consist of only two members, 281.

must not consist of over fifty, 281.

COMPANY, PRIVATE (*continued*),

- must restrict transfer of its shares, 281.
- must not offer public shares or debentures, 281.
- privileges of, as to allotment of shares, 252.
 - annual summary, 272.
 - appointment of directors, 252.
 - commencement of business, 220, 252.
 - exemption from filing statement in lieu of prospectus, 252.
- filing report, 273.
- inspection of reports, etc., by debenture and preference shareholders, 273.
- conversion of, into public company, 281.

COMPANY, UNLIMITED,

- what is, 4.
- what memorandum of association of, must contain, 4.
- must have articles of association, 6.
- form of memorandum and articles of association, 132.
- formed under Joint Stock Companies Acts, power of, to
 - alter amount and division of capital, 74.
- may re-register as limited company, 163.
- re-registration not to affect prior liabilities, etc., 164.
- on re-registration, may provide reserve or increase nominal capital, 164.

COMPENSATION FOR LOSS

- owing to forged transfer, company may make, 208.
 - or owing to transfer under forged power of attorney, 208.
- whatever the date of the forgery, 211.
- company may provide fund for paying, 208.
- to workmen owing to accident, to be a preferential payment in winding up, Appendix.

COMPLIANCE

- with requisitions as to registration, 216.
 - certificate of incorporation to be evidence of, 216.
- with conditions precedent to allotment, 218.
- statutory declaration as to, 220.

COMPROMISE

- with creditors company may make, though not in liquidation, 152.
 - power of liquidators to make, 64.
 - when binding in voluntary winding up, 57.
 - right of appeal against, 58.
 - court may call meeting to decide as to, 159.
 - and may sanction if carried by three-fourths majority, 159.
- with contributories or debtors, liquidators may make, 65.

if other than cash to be specified in returns, 221.

where not reduced into writing, certain particulars to be
filed, 256.

and in report previous to statutory meeting, 227.

contract of allottee's title to be filed, 221.

to be stated in prospectus, 209.

court may grant relief for non-filing of, 200.

filing of memorandum, of, by leave of court, 201.

shares, etc., in purchasing company may be, 65.

power as to, 5.

notice of, to be given to registrar, 13.

so as to re-organise capital, 282.

interest may be paid out of capital during, and as part of cost of, in certain cases, 258.

but only when authorised by articles and special resolution,
259.

and sanctioned by Board of Trade, 259.

to be taken into account upon question of solvency of company, 276.

company may enter into specialty, under their common seal, 156.

written, by authorised agent's signature, 156.

parol, by authorised agent, 156.

foreign, by agent authorised to use their foreign
official seal, 140.

or (if specialty) by seal of their attorney appointed under their seal, 25.

of company not entitled to commence business, to be only provisional, 220.

of title of allottee giving consideration other than cash to be filed within one month of allotment. 221.

particulars of material, to be stated in prospectus, 254.

unless entered into in ordinary course of company's business, 254.

or more than certain time before date of prospectus, 254.

referred to in prospectus not to be varied before statutory meeting, 227.

or in verified statement in lieu thereof, 251.

particulars of proposed variation to be stated in report,
228.

- CONTRACT (*continued*),
 by directors to qualify to be filed before they are named or
 appointed, 202, 216, 251, 286.
 with company to take up and pay for debentures, may be
 specifically enforced, 268.
- CONTRIBUTION OF DIRECTORS,
 amongst themselves, though tortfeasors, 221.
 except in case of fraudulent misrepresentation, 278.
- CONTRIBUTION TO ASSETS OF COMPANY IN WINDING UP,
 declaration as to, by member of company limited by
 guarantee, 4, 76.
 liability of present and past members as to, 17, 32.
 [See also under CONTRIBUTORIES, *infra*.]
- CONTRIBUTORIES,
 definition of, 32.
 nature of liability of, 17, 32.
 liability of in unregistered company, 88.
 in company not formed but registered under Companies
 Acts, 83.
 personal representatives of deceased, to be, 33.
 assignees of bankrupt, to be, 33.
 husbands of, to be in certain cases, 33.
 past members when liable as, 17.
 directors, etc., with unlimited liability when liable as, 144.
 liability of, to creditors ignorant that company has re-
 duced its capital, 149.
 may petition court to wind up company in certain cases,
 36, 157.
 wishes of, as to method, etc., of winding up, to be con-
 sulted, 38, 61.
 court to settle list of, 42.
 and distinguish between classes of, therein, 42.
 calls may be made on, in winding up, 43, 56.
 and rights adjusted *inter se*, 46, 56.
 meetings of, when to be called, 59, 182-195.
 rules for holding meetings of, 200-203.
 to be represented on committee of inspection, 185.
 rights of, where company enters into arrangement with its
 creditors, 159.
 compromise with, may be made in winding up, 65.
 may apply to court for directions, inspection, etc., 58, 60, 64.
 to stay proceedings, etc., 37, 38.
 proceedings against, if suspected of absconding, 48.
 for fraudulently destroying books, etc., 68.
 estates of deceased, 41, 44.
 may be ordered to pay debts subject to right of set-off, 43.
 to hand company's property to official receiver, 42.
 to pay debts into Bank of England, 44.

CONVERSION

- of shares into stock, power of company to effect, 5.
- notice of, to be given to registrar, 13.
- effect of, 13.
- provisions as to, in Table A (revised), 101, 113.
- of stock back into shares, 238.

COPY,

- certified, of documents kept by registrar to be supplied, 72.
- registered under Companies Acts to be evidence, 162.
- of charter, etc., of foreign company trading in England, to be registered, 279.
- what is, under Board of Trade regulations,
- member entitled to buy, of memorandum and articles of association, 9.
- of register of members, 14.
- of statement in Form D, 2.
- of special resolution where company has no articles of association, 24.
- of balance sheet and auditors' report, 270.
- debenture holder entitled to buy, of register of debenture holders, 269.
- of trust deed securing debenture issue, 269.
- to be supplied to registrar, of annual list and summary, 12.
- of report prior to statutory meeting, 217.
- of winding-up order, 38.
- of special resolution for re-organising capital, 282.
- of special resolution, to be embodied in articles of association, 24.
- of resolution that directors' liability is unlimited, 145.
- of minute as to reducing capital, to appear in subsequent memorandum of association, 150.
- of certificate of registration of charge, to be endorsed on debenture, 263.
- of deed, etc., creating charge, to be kept at registered office, 264.
- of memorandum of satisfaction of charge entered on register, company may demand, 233.
- of entries in colonial register, to be sent to registered office, 173.
- of instruments creating charges, which require registration, to be kept at company's office, 264.
- and be open to inspection by members and creditors, 264.
- of statement in Form D to be put up in every office of certain companies, 20.

COSTS,

- upon application to rectify register, 16.
- to remove company's liquidator, etc., 275.

COSTS (*continued*),

- incurred by allottee through improper allotment, directors liable for, 219.
- on petition to wind up, 37.
- by contingent or prospective creditor, 276.
 - presented owing to default in holding statutory meeting, etc., 229.
- of winding up, past and present members liable to contribute to, 17.
 - in unregistered company, 88.
 - calls may be made to satisfy, 43, 56.
 - court may determine priority of, 46.
 - (voluntary), to be prior charge on company's assets, 60.
- of prosecuting guilty directors, etc., 69.
- limited company suing may be ordered to give security for, 30.
- penalty under Companies Act, 1862, may be ordered to be applied towards payment of, 28.
- security for payment of, on inquiry by Board of Trade as to payment of interest out of capital, 259.
- on petition by contingent or prospective creditor, 276.

COUNTY COURT,

- jurisdiction of, in winding up, 178, 179.

COUPON,

- dividends on share warrants may be paid by, 153.
- forgery, etc., of, to be felony, 155, 156.
- personation of owner of, to be felony, 155.
- re-issue of lost, etc., provisions in Table A (revised), as to, 103.

COURT

- having jurisdiction to wind up company, 178, 179.
- is "The Court" in the Companies Act, 1907, 285.
- conduct of winding up business in, 165.
- when company may be wound up by, 34.
- application for winding up by, to be by petition, 36.
- may deal with petition on the hearing thereof, 37.
- ordinary powers of, in winding up, 42-46.
- extraordinary powers of, in winding up, 46-48.
- statutory powers not to derogate from common law powers of, 48.
- power of, to appoint, etc., liquidators, 37, 39, 59, 61, 181.
- powers of, as to staying proceedings in winding up, 37, 38, 84.
- winding up under supervision of, 60-62.
- may call meeting of creditors to consider proposed arrangement, 159.
- may examine, etc., persons believed to have property of company, 47.
- directors, etc., on official receiver's report, 184, 185.
- persons in Scotland, 52.

COURT (*continued*)

- may order delinquent directors, etc., to pay damages, 187, 213.
or to be prosecuted, 68.
- order of, in England enforceable in Scotland or Ireland, 49.
- applications to, in voluntary winding up, 58.
- sanction of, required for reduction of capital, 146, 148.
- to settle list, etc., of creditors entitled to oppose reduction,
147, 161.
- sanction of, required for alteration of memorandum, etc.,
of association as to objects of company, 175.
- may restore to register company struck off as defunct, 171.

CREDITORS OF COMPANY,

- when entitled to object to proposed reduction of capital,
147.
- penalty for concealing names, etc., of, entitled to so object,
150.
- when court may dispense with consent of such, 147, 161.
- ignorant of proposed reduction, protection of rights of, 149.
- protection of interests of, on proposed alteration of objects
of company, 175.
- arrangements with, power of liquidators to make, 64.
- when binding in voluntary winding up, 57.
- right of appeal against, 58.
- court may call meeting to decide as to, 159.
- and may sanction, if carried by three-fourths
majority, 159.
- may petition court to wind up company, 36.
- though only contingent or prospective creditors, 276.
- may claim that winding up should be by court, 60.
- may apply to court in voluntary winding up for directions,
etc., 58, 60, 236.
- for removal, etc., of company's liquidator, 275.
- for appointment of committee of inspection, 275.
- wishes of, as to winding-up proceedings to be regarded, 38, 61.
- may obtain order for inspection of company's books, etc.,
in winding up by or under supervision of court, 64.
- inspect register of mortgages, 20.
- court may fix date within which debts of, must be proved, 45.
- preferential right of, to dividend, etc., due to members as
such, 18.
- transfer of all effects of company to trustees for benefit of,
void, 68.
- when may apply to court for stay of proceedings, etc., 37,
38, 84, 88.
- company may delegate power of appointing liquidators,
etc., to, 57.
- meetings of, in winding up, official receiver to call, 182.
- rules for conduct of, 200-203.

CURRENT ACCOUNT,
deposit of debentures to secure advance on, 267.

D.

DAMAGES,
incurred owing to improper allotment, directors' liability
for, 219.
where no prospectus issued, 252.
untrue prospectus, directors' liability for, 204.
improper use of person's name as director, indemnity
for, 206.
court may assess, against delinquent directors, etc., 167.
grant relief from, in certain cases, 278.

DATE
to appear on register, of entry of member's name thereon,
11.
on which membership ceased, 11.
of issue of share warrant, 140.
of surrender of share warrant, 140.
of commencement of winding up by court, 37.
as regards preferential payments, 276.
of voluntary winding up, 54.
when Companies Act of 1862 came into force, 1.
of 1900 came into force, 239.
of 1907 came into force, 285.

DEATH
of contributory, effect of, 33.

DEBENTURES
include debenture stock, 239.
may be irredeemable, 267.
or only redeemable on happening of an event, 267.
may be offered for subscription at same time as shares,
and application money simultaneously
received, 256.
number and amount of issue, etc., of, to be stated in pro-
spectus, 253.
including amount paid as commission, 255.
certificates of, to be issued within two months of allotment
or transfer, 256.
charge for securing issue of, to be registered, 260.
particulars of commission paid for subscribing for, to be
included, 262.
regulations as to registration of series of, 262.
copy of certificate of registration of certain charges to be
endorsed on, 263.
penalty for delivery of, without such endorsement, 233.

DEBENTURES (*continued*),

- holders of, to be notified of alteration of objects of company, 175.
- if registered, may inspect register, 269.
- may procure copy of trust deed securing, 269.
- entitled to receive and inspect balance sheets, etc., 273.
- except in private company or those prior to 1st July, 1908, 273.
- holding of, entitling to charge on land, not to create an interest in land, 269.
- deposit of, to secure advances on current account, 267.
- debt of company, not to be treated as issue of, at a discount, 262.
- re-issue of redeemed legal (except in certain cases), 267.
- where there has been transfer to keep debentures alive, 267.
- equivalent to new issue for stamp purposes, 268.

DEBTS

- of company, liability of past and present members for, 17.
- inability to pay, ground for winding up company, 34.
- including prospective and contingent debts, 276.
- when company deemed to be unable to pay, 34.
- in case of unregistered companies, 86, 87.
- liability to contribute to assets in winding up to be specialty, 32, 38.
- money due to company from member under its regulations to be specialty, 7.
- of all descriptions may be proved in winding up, 64.
- creditors to prove by time fixed by court, 45.
- calls may be made in winding up to satisfy, 43, 56.
- court may order contributory to pay, subject to set-off, 45.
- power of liquidators to compromise, 64, 65, 159.
- priority of certain, Appendix.
- declaration as to payment of, by members of company limited by guarantee, 4.
- share capital not called up of such company, to be specialty, 38.
- of company registering under Part VII. not to be affected thereby, 81.
- how company reducing capital may deal with, when creditor objects, 147.
- secured, to be registered if created before 1st July, 1908, 265.

DECLARATION

- in memorandum of association of company limited by shares, of limitation of liability, 3.
- of company limited by guarantee, of undertaking of members to contribute, 4.

DECLARATION (*continued*)

of chairman of meeting as to result of meeting, conclusive unless poll is demanded, 23.
provisions as to, in Table A (revised), 56.
statutory, required of compliance with requisitions as to registration, 216.
with conditions precedent to commencing business, etc., 220.

DEED,

company may execute, under their common seal, 156.
give power of attorney for execution of, abroad, 25.
appoint agents abroad to affix official seal to, 140.
liquidator may execute, in name of company, 40.
lien on, not to be prejudiced by order to produce, 47.
memorandum and articles of association to be stamped as though, 5, 7.
copy of trust, to secure debentures, may be bought by debenture holder, 269.
containing charge to secure debentures to be sent to registrar, 262.

DEED OF SETTLEMENT REGULATING COMPANY,

definition of, 177.
company may substitute memorandum, etc., of association for, 175.
alteration, etc., of objects specified in, 176.
copy of altered or substituted, to be registered, 176.
not to prevent re-registration under Companies Act, 1879, 167.
provisions as to, where company seeks registration under Part VII., 78, 82, 83.
defect in appointment or qualification of directors, subsequent discovery of, not to invalidate acts, 29.

DEFINITION of—

"certified" copy (foreign companies), 280.
"colony," 172, 284.
"Companies Acts," 238.
"company," 238.
"company limited by guarantee," 4.
"company limited by shares," 3.
"contributory," 32.
"court," (in winding-up proceedings), 178.
(in act of 1907), 285.
"debenture," 239.
"deed of settlement," 177.
"director," 238.
"expert," 206.
"extraordinary resolution," 284.
"Gazette," 276.

DEFINITION of (*continued*)—

- "insurance company," 1.
- "joint stock company," 77.
- "Joint Stock Companies Acts," 73.
- "member," 10.
- "minimum subscription," 218.
- "prescribed," 238.
- "private company," 281.
- "promoter," 206.
- "prospectus," 238.
- "registered," 238.
- "share warrant," 153.
- "vendor," 225.

DEFUNCT COMPANY,

- name of, may be struck off register, 170.
- procedure preliminary to striking off, 170.
- notice of striking off to be published in *Gazette*, 170.
- such publication operates to dissolve company, 170.
- company failing for certain period to supply returns
liable to be treated as, 236.
- restoring to register company wrongly treated as, 171.
- company, member or creditor may apply for restoration,
171, 236.

DELAY

- in making entry on register, application to judge in chambers to remedy, 16.

DELEGATION

- to creditors of power of appointing liquidators, 57.

DELINQUENT DIRECTORS, etc.,

- court may assess damages against, 187.

DELIVERY

- shares, etc., specified in share warrant to pass by, 153.
- provisions as to, in Table A (revised), 102.

DEPOSIT

- of debentures to secure advances on current account, 267.
- as security for debt not to be treated as issue at a discount, 262.
- of instrument to secure payment of book debts, effect of,
261.

DEPOSIT SOCIETY

- to publish statement in Form D, 20, 123.

DIRECTORS,

- definition of, 238.
- restrictions on appointment or advertisement of persons
as, 216.
- duty of, to obtain qualification within time fixed, 217.

DIRECTORS (*continued*),

where no prospectus is issued, to sign statement in lieu thereof, 251.

except in private companies, 252.

possession of share warrants not to qualify as, 154.

failure to obtain qualification vacates office, 218.

penalty on unqualified persons acting as, 278.

names and addresses of, to appear in preliminary report, 228.

in annual summary, 234.

list of, to be kept at registered office and sent to registrar, 21.

in case of foreign companies trading in United Kingdom, 279.

names, addresses, qualifications and interest in promoting to be stated in prospectus, 253, 254.

when excused for non-compliance with above requirements, 226.

acts and appointments of, to be deemed valid, though defect is subsequently discovered, 29.

not to be elected auditors of company, 165, 235.

to furnish requisite information to auditors, 270.

to sign balance sheet on behalf of board, 270.

when required, to convene extraordinary general meetings, 229.

to send members' report seven days before statutory meeting, 227.

to file report with registrar, 228.

to produce list of members, etc., for inspection at statutory meeting, 228.

minutes of meetings of, to be entered in company's books, 29.

liability of, in limited company may be unlimited, 143, 144, 145.

when register not properly kept, 11.

when list of members not sent to registrar, 13.

for non-registration, where company required to be registered, 92.

for untrue statements in prospectus, 204.

where names improperly inserted in prospectus, 206.

co-directors to contribute when tortfeasors, 205.

except when director seeking contribution has committed fraud, 278.

to repay application money in certain cases, 219.

to compensate company and allottees for loss arising from irregular allotment, 219.

for not filing return of allotments, etc., 221.

for non-compliance with requirements as to registration of charges, etc., 233.

DIRECTORS, liability of (*continued*),

- for wilfully concealing name of creditor entitled to object to reduction of capital, 150.
- not affected by dissolution of company as defunct, 170.
- court may relieve from in absence of dishonesty or unreasonableness, 278.
- statutory declaration by, as to requirements with registration, etc., to be produced to registrar, 216.
- powers of, to cease on appointment of liquidators, 55.
- statements of company's affairs in winding up to be verified by, 182.
- court may assess damages against delinquent, 187.
- examine, when believed to possess company's property, 46.
- or to have been fraudulent in promotion, etc., of company, 184.
- prosecute in certain cases, 68, 69.
- provisions as to, of company seeking registration under Part VII., 78, 79.
- in Table A (revised), 110-116.

DISCHARGE,

- power of liquidators to give, in winding up, 65.

DISCONTINUANCE OF BUSINESS

- for one year, ground for winding up company, 34.
- renders company liable to be treated as defunct, 170.

DISCOUNT,

- allowance by way of, when lawful on public offer of shares, 221, 258.
- on private offer of shares, 258.
- amount to be stated in summary, 257.
- and prospectus, 222, 254.
- in consideration of subscribing for debentures, to be registered, 262.

DISCUSSION

- to be allowed at statutory meeting as to formation of company, 228.

DISPOSAL

- of books of company about to be dissolved, 63.

DISPOSITION

- of property between commencement of, and order for winding up, void, 63.

DISSENTIENT MEMBERS

- in respect of reconstruction, may compel company to buy him out, 66.
- determination of price to be paid to such, 67.
- in respect of alteration of objects of company, 176.
- purchase of interest of such, 176.

DISSOLUTION OF COMPANY,

court to make order for, 46.
 liquidator to report order to registrar, 46.
 registrar to make minute of, 46.
 in voluntary winding up, when to take effect, 60.
 date of taking effect may be deferred, 277.
 may be declared void within two years of date of, 279.
 order deferring date of, or avoiding, to be filed, 279.
 as defunct, effected by striking off register, 170.

DISTRESS

on effects of company after winding up commenced, void,
 67.

DISTRIBUTION

of surplus, after adjustment of rights of contributories, 46.
 of assets, liquidator to take necessary steps for, 41.
 creditors not proving within certain time to be ex-
 cluded from, 45.

DIVIDEND

due to member to be taken into account in adjusting
 rights of contributories, 18.
 not to be paid to shareholder of unregistered company
 where registration is compulsory, 92.
 to be paid proportionately to proportion of share paid up,
 152.
 on share warrants may be paid by coupon or otherwise, 153.
 forgery, etc., of coupon for payment of, felony, 155.
 provisions in Table A (revised), as to, 116, 117.
 on investments of surplus funds in winding up, 192.

DIVISION OF CAPITAL,

provisions in Table A (revised), as to, 94, 105.

DIVISION OF SHARES

into shares of smaller amount, 150.
 statement as to, in subsequent memorandum of association
 to be altered accordingly, 151.
 into shares of different classes by special resolution con-
 firmed by order of court, 282.
 order confirming, to be filed with registrar, 282.

DOCUMENTS,

company may appoint agent to execute, abroad with its
 official seal, 140.
 such sealing of, equivalent to sealing with common seal, 141.
 liquidator may execute, in name of company, 40.
 lien on, not to be prejudiced by order to produce, 47.
 to be evidence of certain facts in winding up, 63.
 how to be disposed of on dissolution of company, 63.
 inspection of, by creditors or contributories, 64.

DOCUMENTS (*continued*),

- fraudulent destruction, etc., of, to be a misdemeanor, 68.
- service of, on company may be by post, 27.
- kept by registrar, any one entitled to inspect, 72.
- or to have copy of or extract from, 72.
- such copy or extract to be evidence, 162.

E.**EFFECTS OF COMPANY,**

- distress on, after winding up commenced, void, 67.

ELECTION

- of director with unlimited liability, notice to be given to, 145.
- of directors, provisions in Table A (revised), as to, 114, 115.
- of auditors at annual meetings of company, 234.

ENTRY

- of trusts on register, forbidden, 13.
- in colonial register, copy of, to be sent to registered office, 173.

EQUALITY OF VOTES,

- provisions in Table A (revised), as to, 108, 115, 116.

EVIDENCE

- of title to stock or shares, certificate under seal to be, 14.
- of compliance with requisitions as to registration, etc.,
certificate of incorporation to be, 216.
- as to registration, etc., statutory declaration may be
accepted as, 216.
- as to registration of charges, certificate to be, 231.
- as to reduced capital, certificate of registration of
order, etc., to be, 148.
- of alteration of objects of company, certificate of
registrar to be, 177.
- prima facie*, of contents, registers of members to be, 16, 173.
- of liability of contributories, list settled by liquidators
to be, 55.
- in winding up, certain accounts to be, 63.
- order of court on contributories, to what extent to be, 44.
- of carrying of special resolution, chairman's declaration
to be, 23.
- of proceedings at meetings, etc., entries in company's
books to be, 29.
- certified copies of documents under Companies Acts to be,
162.
- copies or extracts from registered documents to be, 148.
- office copy of order of one court to be, in any other court, 50.
- special commissioners for taking, who are, 51.
- inspectors into company's affairs may take, on oath, 26.
- giving of false to be perjury, 69.

EXAMINATION

of affairs of company, Board of Trade may order, 25.
application for, must be supported by evidence, 26.
may be by inspectors appointed by special resolution, 26.
in winding up, of person as to affairs of company, 47.
of director, etc., on official receiver's report, 184.
before whom, to be held, 185.
conduct of, 184, 185.

EXECUTION

if returned unsatisfied, company to be deemed insolvent,
35, 87.
against company's effects, void after winding up com-
menced, 67.

EXECUTION OF DEEDS

to be under company's common seal, 142.
by liquidator in winding up, 40.
abroad, company may give power of attorney for, 25.
or may authorise use of foreign official seal for, 140.
in such case date of, to be certified on deed, 141.

EXPENSES,

preliminary, to be stated in prospectus, 253.
unless published one year after date of commencing
business, 226.
account of, to be included in first report, 272.
of winding up, members of company liable to contribute
to, 17, 88.
to be prior charge on company's assets, 60.
of construction, payment of interest on shares issued to
defray, 258.

EXPERT,

definition of, 206.
when director, etc., may shelter behind report, etc., of, 205.

EXTENSION OF TIME

for filing contracts of certain allotments, etc., 257.

EXTRACT

from registered document to be evidence, 162.
certified, of document kept by registrar to be supplied, 72.

EXTRAORDINARY GENERAL MEETING

to be convened by directors on requisition of certain
shareholders, 229.
otherwise requisitionists may convene, 229.
further, to be convened if necessary, 230.
provisions in Table A (revised), as to, 106.

EXTRAORDINARY RESOLUTION,

definition of, 284.
that company cannot continue business, 54.

EXTRAORDINARY RESOLUTION (*continued*),
 sanction of, required for arrangement with creditors, 57, 64.
 or with debtors or contributories, 65.
 delegation of powers, etc., to creditors by, 57.
 to wind up voluntarily, notice of, to be published in
 Gazette, 55.
 liquidators may call meetings to obtain company's sanction
 by, 58.
 as to disposition of books, etc., of company voluntarily
 wound up, 63.

F.

FALSE ENTRIES,
 making in register, accounts, etc., a misdemeanour, 68.

FALSE EVIDENCE,
 giving, to be perjury, 69.

FALSE STATEMENTS,
 making in returns, etc., a misdemeanour, 237.

FEES
 payable on filing forms under Companies Act, 1900, 241-
 250.
 under Companies Acts to be collected by means of stamps,
 240 *n*.
 payable to registrar, where capital divided into shares, 8,
 121.
 not divided into shares, 8, 222.
 amount of above, not to be increased by Board of
 Trade, 31.
 on registration, of mortgages, etc., 217.
 person effecting registration may recover, from com-
 pany, 263.
 on inspection of register of mortgages, etc., 232.
 of documents kept by registrar, 72.
 for certified copy of documents kept by registrar, 72.
 maximum scale of, under Forged Transfers Act, 208, 211.
 payable to company, on inspection of their register of
 mortgages, 269.

FINAL ADJUSTMENT
 of rights of contributories *inter se*, 17, 18.
 where company unregistered, 88.
 may be made by court, 46.
 court may make calls for, 43.

FINAL JUDGMENT,
 order for payment of damages by delinquent director in
 winding up, to be, 213.

FLOATING CHARGE

- on property of company to be registered, 260.
- created within three months of winding up to be invalid, 266.
- unless company prove to be solvent at date of creation of charge, 266.
- debenture holders secured by, postponed to certain preferential creditors, Appendix.

FOREIGN COMPANY WITH PLACE OF BUSINESS IN UNITED KINGDOM

- to file with registrar certified copy of charter, etc., 279.
- list of directors, 279.
- name and address of authorised agent, 279.
- annual statement of affairs, 279.
- notice to postal address of authorised agent of, sufficient, 279.
- further requirements, if name comprises "limited," 280.
- penalty for non-compliance with above requirements, 280.

FOREIGN COUNTRY,

- company may give power of attorney for executing deeds in, 25.
- company for transacting business in, may have official seal for use in, 140.

FOREIGN PROPERTY

- comprised in charge, etc., regulations as to registering, 140.

FORFEITURE OF SHARES,

- provisions in Table A as to, 95, 96.

FORGED TRANSFER,

- company may pay compensation for loss owing to, 208.
- or owing to forged power of attorney, 208.
- whatever the date of the forgery, 211.
- company may make reasonable rules to guard against, 208.
- company compensating for, to stand in place of person compensated, 209.

FORGERY

- of share warrants, etc., to be felony, 155, 156.

FORMS

- of transfer of shares in company in Table A (revised), 97.
- of appointment of proxy in Table A (revised), 110.
- of statement of banking, etc., companies (Form D in first schedule), 123.
- of annual list and summary (Form E in second schedule), 133.
- A to F in second schedule of Companies Act, 1862, 124-136.
- such forms to be used if possible, 31.
- alteration thereof by Board of Trade, 31.
- published by Board of Trade for use under Companies Act, 1900, 240-250.

FOUNDERS' SHARES,

number of, to be stated in prospectus, 223.
fees payable on filing, 241-250.

FRAUDULENT

entries in register accounts, etc., a misdemeanour, 68.
statement in returns, etc., a misdemeanour, 237.

FRAUDULENT PREFERENCE,

act amounting to, to be invalid, 67.

FULLY PAID-UP SHARES,

company may have some of its shares, and others not, 152.
only, may be converted into share warrants, 156.
to be distinguished from partly paid-up shares in annual
summary, 12, 133.

in return of allotments, 221.

in prospectus, 223.

in report prior to statutory meeting, 227.

**FUND FOR COMPENSATION OF LOSSES OWING TO
FORGED TRANSFER, Etc.,**

company may provide, 208.
provisions as to raising, etc., 208.

G.**GENERAL MEETING**

to be held once at least every year, 22.

and within fifteen months of previous general meeting,
273.

penalty for not so holding, 273.

on default in so holding, member may apply to court, 273.

and court may direct holding of, 273.

if company be member may appoint an individual to re-
present it at, 273.

notice of, to be given as prescribed by company's regula-
tions, 23.

if no regulations, seven days' notice of, required, 24.

and five members competent to call, 24.

provisions of Table A (revised), as to proceedings at, 106,
107, 108.

auditors to be appointed at, 234, 235.

remuneration of auditors to be fixed at, 166, 235.

report of auditors to be read at, 166, 235.

regulations of company may be altered at, by special
resolution, 22.

proceedings at, to be duly entered in company's books, 29.

to be deemed *prima facie* regular, if entries duly made, 29.

subsequent, to be held between fourteen days and one
month after former meeting, 23.

- GENERAL MEETING** (*continued*),
 extraordinary, to be convened by directors on requisition
 of certain shareholders, 229.
 otherwise requisitionists may convene, 229.
 further, to be convened if necessary, 230.
 liquidators to be appointed at, 55, 59.
 to be called by liquidators during winding up, 58.
 and on completion of winding up, 59.
 liquidators to report holding last, to registrar, 60.
- GOODWILL**,
 amount paid for, on purchase by company to be stated in
 prospectus, 224.
- GUARANTEE, COMPANY LIMITED BY**,
 what is, 4.
 what memorandum of association must contain, 4.
 must have articles of association, 6.
 form of memorandum and articles of association of, 235.
 name of, to appear on offices, notices, etc., 19.
 but may in certain cases be licensed to omit "limited,"
 151.
 not to have capital divided into shares, unless memo-
 randum of association so provides, etc., 237.
 effect on capital of, of winding-up order, 38.
 of voluntary winding up, 57.

H.

- HEIRS OF DECEASED CONTRIBUTORY**,
 when liable as contributories, 33.
- HIGH COURT**,
 jurisdiction of, in winding up, 178, 179.
- HONEST MISTAKE OR IGNORANCE OF DIRECTOR**
 excuses for non-compliance with requirements as to pro-
 spectus, 226.
- HUSBAND OF CONTRIBUTORY**,
 when liable as contributory, 33.

I.

- IGNORANCE**,
 honest, of director, excuses non-compliance with require-
 ments as to prospectus, 226.
 may enable him to obtain relief from the court, 278.
- INCORPORATION**,
 certificate of, to be issued on registration, 8.
 to be altered on company changing name, 6.
 to be furnished to any applicant, 72.
 to be conclusive as to compliance with requisitions as
 to registration, 216.

- INCORPORATION, certificate of (*continued*),
 of company registering under Part VII., 80.
 of banking company existing before 1862 to take effect
 from date in certificate, 79.
- INCREASE OF CAPITAL,
 power of limited company as to, 5.
 beyond registered capital, to be notified to registrar within
 fifteen days, 15.
 (nominal) by unlimited company re-registering as limited
 company, 164.
 unpaid, by reduction of paid-up capital, 168.
 provisions of Table A (revised), as to, 104.
- INCREASE OF MEMBERS
 beyond registered numbers to be notified to registrar within
 fifteen days, 15.
- INDEX
 to register of mortgages, etc., to be kept by registrar, 233.
- INDORSEMENT
 on debenture of copy of certificate of registration of charge,
 263.
- INQUIRY
 by Board of Trade, before sanctioning payment of interest
 out of capital, 259.
- INJUNCTION AGAINST FURTHER PROCEEDINGS, Etc.,
 court may grant after presentation of petition to wind up,
 37.
- INSOLVENCY OF COMPANY,
 what deemed to be, 34.
 a ground for winding up by court, 34, 88.
- INSPECTION OF AFFAIRS OF COMPANY,
 when Board of Trade may order, 25.
 application for, to be supported by evidence, 26.
 may be, by inspectors appointed by special resolution, 26.
 books, etc., to be produced by company's officers for, 26.
 by committee, application to court for, 182, 275.
 of whom to consist, 185.
 regulations as to meetings for, 186.
- INSPECTION
 of balance sheets, reports, etc., 270, 273.
 provisions in Table A (revised), as to, 118.
 by creditors or contributories in winding up, 64.
 of charges, etc., at registration office, 264.
 company's office, 20, 264, 269.
 of documents kept by registrar, to be had at registration
 office, 72.

INSPECTION (*continued*)

- of register of debenture holders by such holders, 269.
- penalty for refusing, 269.
- of members, 14.
- penalty for unlawfully refusing, 14.

INSURANCE COMPANY,

- definition of, 1.
- to publish statement in Form D, if limited, 20, 123.
- unless Life Assurance Companies Acts are complied with, 282.
- if registered under 8 Vict. cap. 110, must re-register under Companies Acts, 91.

INTEREST

- of member in company to be personal estate, 10.
- dissenting from reconstruction, purchase of, 66.
- determination of value of, 67.
- from alteration of objects of company, purchase of, 162.
- of holders of founders', etc., shares in property of company, to be stated in prospectus, 252.
- of directors in property, etc., to be acquired by company, particulars of, to be stated in prospectus, 254.
- unless published more than one year after date of commencing business, 225.
- at 4 per cent. to accrue on money of applicants improperly retained, 219.
- payment of, out of capital during construction of works, 258.
- rate of, not to exceed 4 per cent., 259.
- particulars of, to appear in company's accounts, 259.

INTERIM DIVIDENDS,

- provision as to payment of, in Table A (revised), 116.

INVESTMENT,

- of surplus funds in winding up, 191.
- of money set aside as reserve, provisions as to, in Table A (revised), 117.

INVITATION TO SUBSCRIBE FOR SHARES,

- prohibition of public, essential for private company, 281.
- restrictions upon allotment, if given to public, 218.
- if not given to public, 251.
- restrictions, if to public, upon commencement of business, etc., 221.
- except in companies registered before 1st July, 1908, 291.
- document giving, is "prospectus," 238.
- to existing members, not subject to provisions in Companies Act, 1900, Sect. 10, as to prospectuses, 225.

IRELAND,

- order made in England to be enforceable in, 49.

IRREDEEMABLE DEBENTURES,

issue of, valid, 267.

IRREGULAR ALLOTMENT

voidable by applicant within one month of statutory meeting, 219.

ISSUE

of irredeemable or contingently redeemable debentures, valid, 267.

of debentures, particulars to be stated in prospectus as to, 253.

charge for securing, to be registered, 260.

registration of, where more than one issue in same series, 262.

by way of re-issue,

of prospectus, date of to appear on prospectus, 222.

requirements preliminary to, 222, 223.

if more than one year after company entitled to commence business, restrictions on appointment, etc., of directors not to apply, 226.

containing untrue statements, liability of directors on, 204.

persons authorising such, to be liable, 204.

of shares, particulars to be stated in prospectus as to, 260.

where consideration for, differs, difference to be shown in annual summary, 234.

new, when limited company has power to make, 5.

of share warrants to bearer, power of limited company to make, 153.

entries to be made in register on, 154.

provisions as to, in Table A (revised), 116.

J.**JOINT-HOLDERS OF SHARES,**

provisions in Table A (revised), as to, 96, 99, 117, 119.

in private company, to count as single member, 281.

JOINT-STOCK COMPANY,

definition of, 77.

certain companies other than, not to register under Part VII., 75.

requisitions as to registration of, 77, 79.

registrar may require evidence that company seeking registration under Part VII. is, 79.

JOINT-STOCK COMPANIES ACTS,

definition of, 73.

application of Companies Act, 1862, to companies formed and registered thereunder, 74.

to companies registered but not formed thereunder, 74.

- JOINT-STOCK COMPANIES ACTS** (*continued*),
 company registered under, how shares in, may be transferred, 75.
 may be registered under Companies Acts, 76.
- JOINT-STOCK COMPANIES ARRANGEMENT ACT**,
 to apply to company though not being wound up, 282.
- JUDGE IN CHAMBERS**
 may do whatever "court" is authorised to do, 36.
- JUDGE OF COUNTY COURT**
 to be a commissioner to take evidence in winding up, 51.
- JUDICIAL NOTICE**
 to be taken of certain seals and signatures, 51, 53.
- JURISDICTION IN WINDING UP**
 of High Court, 178, 179.
 of County Court, 178.

L.

- LAND**,
 company when incorporated to have power to hold, 8, 81.
 restriction on company formed to promote art, charity, etc.,
 unless licensed by Board of Trade, 10.
 form of such licence, 136.
 charge on, created by company to be registered, 260.
- LICENCE OF BOARD OF TRADE**
 for certain companies to hold over two acres of land, 10.
 form of, 136.
 for certain limited companies to omit "limited" from
 name, 151.
 may be revoked by Board of Trade at any time, 283.
 notice of intention to revoke to be given to company, 283.
- LIEN**
 on property of company not to be affected by order to produce, 47.
- LIFE ASSURANCE COMPANY**
 relieved from Form D, if Life Assurance Companies Acts
 complied with, 282.
- LIMITATION OF TIME**
 for recovery of loss, etc., caused by improper allotment, 219.
- LIMITATION OF LIABILITY**
 may be either to amount unpaid on shares held, 3.
 or to amount undertaken to be contributed in winding up, 3.
 declaration as to, to appear in memorandum of association, 3, 4.
 to be certified by registrar on registration, 8, 77.

"LIMITED"

- to appear as last word of name of limited company, 3, 4.
- company not for gain may be licensed to omit, 137.
- but such licence may be revoked, 283.
- in case of company seeking registration under Part VII.,
78, 80.
- improper use of, penalty for, 285.

LIQUIDATOR IN VOLUNTARY WINDING UP,

- appointment of, 55, 57, 59.
- to file notice of appointment with registrar, within twenty-
one days, 274.
- to send notice of meeting of creditors to all creditors,
274.
- to advertise notice of such meeting, 274.
- may apply to court for directions, 58, 181.
- power of, to call meetings, 58, 59.
- to make compromises, etc., with creditors, etc., 64, 65.
- to reconstruct company by sale to new company, 66.
- duties of, on completion of winding up, 59, 60, 63.
- removal of, by court, 59.
- on application of creditors to court, 275.
- appointment of additional on application of creditors to
court, 275.
- costs and remuneration of, to be first charge on company's
assets, 60.

LIQUIDATOR IN WINDING UP BY COURT,

- appointment of, 39.
- provisions as to official liquidator in Companies Act, 1862,
to apply to, 180.
- powers of, generally, 40, 41, 171, 189, 194, 195.
- to make compromises, etc., with creditors, etc., 64, 65,
189.
- to be under control of, and accountable to, Board of Trade,
193, 195.
- removal or release of, 39, 194.
- remuneration of, 39.

LIQUIDATOR IN WINDING UP UNDER SUPERVISION OF COURT,

- appointment of additional, 61.
- powers of, to be same as those of liquidators in voluntary
winding up, 62, 65.
- removal of, 61.

LIST,

- annual, to be made every year within twenty-one days of
first general meeting, 12.
- what to contain, 12.
- where capital reduced by return of profits, 169.

LIST, annual (*continued*),

- to be signed by manager or secretary of company, 234.
- copy of, to be forwarded to registrar, 12.
- exception in case of company formed not for gain, 152.
- of contributories, court to settle in winding up by court, 42.
- classes of contributories to be distinguished in, 42.
- liquidators to settle in voluntary winding up, 56.
- to be *prima facie* evidence of liability of persons therein, 56.
- of creditors entitled to object to reduction of capital, court to settle, 147.
- of directors to accompany application for registration, 216.
- of shareholders to be accessible at statutory meeting, 228.
- required by registrar where company seeks registration under Part VII., 78, 79.

LOSS

- incurred through untrue statements in prospectus, liability of directors, etc., for, 204.
- improper allotment, liability of directors for, 219.
- improper entry of bearer of share warrant, liability of company for, 154.
- forged transfer, company may compensate for, 208.
- company compensating to have action over against person causing, 209.
- provisions in Table A (revised), as to replacing, of certificate, 95.
- of share warrant, 103.

LOST CAPITAL,

- may be cancelled, 146.

M.

MAJORITY REQUIRED AT MEETING

- for proposing special resolution, three-fourths, 23.
- for confirming special resolution, bare, 23.

MANAGEMENT SHARES,

- number of, to be stated in prospectus, 223.

MANAGERS,

- possession of share warrants not to qualify, if share qualification required, 154.
- names and addresses of, to appear in preliminary report, 228.
- list of, to be kept at registered office and sent to registrar, 21.
- acts and appointments of, to be deemed valid though defect is subsequently discovered, 29.
- (or secretary) to sign annual list and summary, 234.
- not to be elected auditors of the company, 235.

MANAGERS (*continued*),

- to furnish requisite information to auditors, 235.
- minutes of meetings of, to be entered in company's books, 29.
- liability of, in limited company may be unlimited, 143, 144, 145.
- when register not properly kept, 11.
- or list of members not sent to registrar, 13.
- for non-registration, where company required to register, 92.
- for not filing returns of allotments, etc., 221.
- for non-compliance with requirements as to registration of charges, etc., 233.
- for wilfully concealing name of creditor entitled to object to reduction of capital, 150.
- not affected by dissolution of company as defunct, 170.
- statement of company's affairs in winding up, to be verified by, 182.
- court may assess damages against delinquent, 187.
- examine, when believed to possess company's property, 46.
- or to have been fraudulent in promotion, etc., of company, 184.
- prosecute in certain cases, 69.
- appoint special, on application of official receiver, 181.
- and fix their remuneration, 181.
- provisions as to, of company seeking registration, under Part VII., 78, 79.

[See also under RECEIVER.]

MARRIAGE

- of female contributory, effect of, 33, 88.

MATERIAL CONTRACT,

- particulars of, to be stated in prospectus, 224.
- and when and where copy of, can be inspected, 224.
- rule as to disclosure of, when prospectus published more than one year after business commenced, 226.

MEETING, GENERAL,

- to be held at least once every year, 22.
- and within fifteen months of previous general meeting, 273.
- penalty for not so holding, 273.
- on default in so holding, member may apply to court, 273.
- and court may direct holding of, 273.
- if company be member may appoint an individual to represent it at, 273.
- notice of, to be given as prescribed by company's regulations, 23.

MEETING, GENERAL (*continued*),

- if no regulations, seven days' notice of, required, 24.
- and five members competent to call, 24.
- provisions of Table A (revised), as to proceedings at, 106, 107, 108.
- auditors to be appointed at, 234, 235.
- remuneration of auditors to be fixed at, 235.
- report of auditors to be read at, 235.
- regulations of company may be altered at, by special resolution, 22.
- proceedings at, to be duly entered in company's books, 29.
- to be deemed *prima facie* regular if entries duly made, 29.
- subsequent, to be held between fourteen days and one month after former meeting, 23.
- extraordinary, to be convened by directors on requisition of certain shareholders, 229.
- otherwise requisitionists may convene, 229.
- further, to be convened if necessary, 230.
- liquidators to be appointed at, 55, 59.
- to be called by liquidators during winding up, 58.
- and on completion of winding up, 59.
- liquidators to report holding last, to registrar, 60.

MEETING, STATUTORY,

- what is, 227.
- to be held between one and three months after company entitled to commence business, 228.
- list of shareholders to be open to inspection at, 228.
- discussion of matters as to formation of company to be allowed at, 228.
- may be adjourned as required, 228.
- if not duly held, shareholders may petition court to wind up company, 229.

MEETINGS

- of contributories, court may summon to ascertain wishes of, 38.
- of creditors, court may summon to ascertain wishes of, 38.
- to decide as to proposed arrangement, 159.
- three-fourths majority required at, to make arrangement binding, 159.
- in winding up, official receiver may call, 182.
- provisions as to proceedings at, 200-203.
- liquidators may call, 195.
- of directors or managers, minutes of, to be entered in company's books, 29.
- provisions in Table A (revised), as to, 115, 116.

MEMBERS OF COMPANY,

- who are, 10.
- when holders of share warrants are deemed to be, 154.
 - can become, 154.
 - cease to be, 154.
- register of, what to contain, 11.
- registrar to be notified if number of, increased, 15.
- number of, in public company, to be at least seven, 6.
 - if less, company may be wound up, 34.
 - and member's liability is increased, 22.
 - in private company, to be at least two, 281.
 - and not more than fifty, 281.
- liability of, may be limited by shares or guarantee, 3.
 - how affected by reduction of capital, 149.
 - to contribute to payment of creditors ignorant of such reduction, 149.
 - to contribute in winding up, 17.
- position of, when dissenting from proposed reconstruction, 66, 67.
 - from proposed alteration of objects of company, 176.
- of company registered but not formed under Companies Acts, 82, 83.
- are bound by provisions of registered memorandum of association, 5.
- interest of dead, may be transferred by their personal representatives, 11.
- prosecution of guilty, in winding up, 68, 69.
- seeking registration under Part VII., must assent, 75, 76.
 - list of, required by registrar, 78, 79.
 - actions, etc., pending against, 81.

MEMORANDUM OF ASSOCIATION,

- contents of, of company limited by shares, 3.
 - limited by guarantee, or unlimited, 4.
 - to be stated in prospectus, 252.
 - with certain exceptions, 225.
- to contain signed agreement by directors to take qualification shares, 217.
- Board of Trade may order insertion of special provisions in, of company formed not for gain, 152.
- to be sent to registrar for registration, 8.
 - and accompanied by list of persons consenting to be directors, 217.
- when registered binds members as though executed by them, 5.
- how to be executed by subscribers, 5.
- subscription of, operates as contract to become member, 10.
- may provide for liability of directors, etc., being unlimited, 143.

MEMORANDUM OF ASSOCIATION (*continued*),

- alterations in, providing for change of name, 5.
 - increase or reduction of capital, 5, 146.
 - division of capital into larger or smaller shares, 5, 151.
 - re-organisation of capital by special resolution confirmed by court, 282.
- restrictions upon, 282.
- conversion of shares into stock, 5.
- reconversion of stock into shares, 238.
- cancellation of unissued shares, 161.
- liability of directors, etc., being unlimited, 155.
- alteration of objects and constitution of company by, 175.
- restriction or abandonment of objects specified in, 176.
- minute of reduction of capital, etc., to appear in copies of, issued subsequently, 146, 149, 151.
- print of, altering objects or constitution of company, to be registered, 177.
- may be substituted for deed of settlement, etc., by special resolution, 175.
- substitution for, in company registered but not formed under Companies Acts, 82.
- to be stamped as though a deed, 5.
- members entitled to have copies of, for one shilling, 9.
- of foreign company, certified copy (or translation) of, to be filed, 279.
- notice of alteration in, to be filed, 279.

MEMORANDUM

- of particulars of capital as reduced to be approved by court and registered by registrar, 148, 161, 168.
- of satisfaction of debt secured by registered charge to be entered on register, 233.

MINIMUM SUBSCRIPTION,

- definition of, 218, 251.
- subscription of amount of, condition precedent to allotment, 218, 251.
- to be fixed and named exclusively of payments other than cash, 218, 251.
- allotment of fully paid shares equal to, may entitle company to commence business, etc., 220.
- on which directors may proceed to allotment, to be stated in prospectus, 253.

MINUTE OF DISSOLUTION OF COMPANY,

- registrar to make, 46.

MINUTE OF PARTICULARS OF CAPITAL AS REDUCED

- to be approved by court and registered by registrar, 148, 168.
- when registered to be substituted for corresponding part of memorandum of association, 149.
- liability of members on shares to be fixed by, 149.
- to appear in subsequent memorandum of association, 150.

MISREPRESENTATION IN PROSPECTUS,

- liability of director for, 204.
- contribution from co-directors towards such liability, 207.
- except in case of fraud, 278.

MISSTATEMENT,

- accidental, as to charge requiring registration, rectification of, 232.

MISTAKE OF FACT,

- when defence to action for false statement in prospectus, 226.
- for non-disclosure in prospectus, 204.

MODIFICATION

- of conditions in memorandum of association, what may be made, 5.
- of regulations of company, to be made by special resolution, 22.
- of contract referred to in prospectus, restrictions on, 227, 228.

MORTGAGES,

- copy of deeds creating, to be kept for inspection at company's office, 264.
- debt due on, to be stated in annual summary, 234.
- register of, affecting company's property to be kept, 20, 261.
- to be open to inspection, 20, 264, 269.
- when judge may order inspection of, 20.
- index to, to be kept, 233.
- memorandum of satisfaction may be entered on, 233.
- registration of, when required, 260.
- effect of failure to comply with, 260.
- comprising foreign property, regulations as to, 260, 261.
- certificate of, to be given, 263.
- compulsory* on company, 263.
- permissible* for any person interested, 263.
- court may grant relief for omission in, 232.
- penalty for failure to effect, 233.

N.**NAME OF COMPANY**

- not to end with "limited" unless duly incorporated, 285.
- (if limited) to appear in memorandum of association with "limited" as last word, 4.
- except in case of company not for gain, 151.
- additional requirements in case of foreign companies, 280.
- (if unlimited) to appear in memorandum of association, 4.

NAME OF COMPANY (*continued*)

- not to be identical with or similar to that of existing company, 9.
- to be affixed outside every place where company carries on business, 19.
- to be legibly engraved on company's seal, 19.
- to appear on all notices, bills, etc., of company, 19.
- may be changed in certain cases, 6.
- seeking registration under Part VII., provisions as to, 79, 80.
- reducing capital, "and reduced" to be added to end of, 146.
- unless court sanctions omission of "and reduced," 161.
- defunct, may be struck off register, 170.
- restored by order of court, 171.

NAMES

- of allottees to appear in return of allotments, 221.
- of creditors entitled to object to reduction of capital to be entered on list, 147.
- concealment of, by directors, etc., misdemeanour, 150.
- of directors consenting to act, to be furnished on application for registration, 217.
- or proposed directors, to appear in prospectus, 223, 226.
- and managers to be entered on register, 21.
- auditors and officers of company to appear in first report, 228.
- to be set out in annual summary, 234.
- of members of company to be entered on register, 11.
- and on annual list, if company has share capital, 12.
- to be removed from register on issue to them of share warrants, 154.
- of authorised agents of foreign companies resident in United Kingdom to be filed, 279.

NEGLIGENCE,

- relief to director liable for, 278.

NEGOTIABLE INSTRUMENT,

- given to secure book debts, deposit of, not to require registration as charge on these debts, 261.

NEWSPAPER,

- what particulars to be stated in prospectus published as advertisement in, 226.

NOMINAL AMOUNT OF CAPITAL,

- increase of, by unlimited company re-registering as limited company, 164.

NOMINAL AMOUNT OF SHARE,

- at least 5 per cent. of, to be payable on application, 219, 251.
- provisions as to, in Table A (revised), 94, 96.

NOTICE,

- authentication of, may be by signature of company's authorised officer, 27.
- offering shares, etc., to public for subscription is a prospectus, 238.
- inviting *further* subscriptions from members of company not treated as prospectus, 225.
- of alteration of directors, agent, etc., of foreign company to be filed with registrar, 279.
- of appeal from order in winding up to be given within three weeks thereof, 50.
- of appointment of receiver of company's property to be given to registrar, 265.
- penalty for default in giving, 265.
- of consolidation or conversion of capital into stock, 13.
- of intention of banking company to register as limited company, to be given to customers, 78.
- of intention to strike off company as defunct to be gazetted, 170.
- to nominate auditor, to be given fourteen days before annual meeting, 271.
- copy thereof to be sent to retiring auditor, 271.
- and communicated to shareholders, 271.
- of liability being unlimited to be given to director on election, 145.
- of meeting for passing special resolution, to be given according to company's regulations, 23.
- or if no regulations, seven days before, 24.
- of order, etc., confirming reduction of capital, 148.
- of proposed alteration of objects of company, 175.
- of reconversion of stock into shares, 13, 290.
- of resolution to be passed at statutory meeting, necessary, 228.
- to wind up voluntarily to be gazetted, 55.
- of situation of registered office, to be given to registrar, 18.
- of office where colonial register is kept, to be given to registrar, 172.
- of striking company off register to be gazetted, 170.
- of time within which creditors may object to reduction of capital, 147.
- of trusts, not to be entered on register, 13.
- of vacation of office by receiver, 283.
- service of, on company may be by post, 27.
- provisions as to, in Table A (revised), 119, 120.
- by registrar, for purposes of striking off defunct company, 171.
- on foreign company, to be on agent in United Kingdom, 279.

NUMBER OF PERSONS

- required to form public company, at least seven, 2.
- if reduced below seven, members' liability is increased, 22.
- or company may be wound up, 34.
- required to form private company, two, 281.
- but must not exceed fifty, 281.
- forming unregistered partnership, etc., not to exceed ten in case of banks, twenty in other cases, 1.

O.**OBJECTION**

- to reduction of capital, right of creditors to make, 147.
- when court may deprive creditors of, 147, 161.
- to alteration of objects of company, position of creditors, etc., making, 175.

OBJECTS FOR WHICH COMPANY IS FORMED

- must appear in memorandum of association, 3.
- alteration of memorandum of association as to, 175.
- purposes for which court may sanction alteration of, 176.

OCCUPATION

- of members to appear in register, 11.
- and on annual list of company having share capital, 12.
- of directors and managers, register of, to be kept at registered office and sent to registrar, 21.

OFFENCES

- punishable by penalties under Companies Act, 1862, to be prosecuted summarily, 285.

OFFER OF SHARES

- and debentures for subscription may be simultaneous, 256.
- prohibition of public, essential for private company, 281.
- restrictions upon allotment, if made to public, 218.
- if not made to public, 251.
- restrictions, if made to public, upon commencement of business, etc., 221.
- to public, is a "prospectus," 238.
- to existing members, not subject to provisions in Companies Act, 1900, Section 10, as to prospectuses, 225.

OFFICE, REGISTERED, OF COMPANY,

- every company to have, 18.
- situation, or change, thereof, to be notified to registrar, 18.
- until registrar notified, provisions of Companies Acts not complied with, 18.
- where colonial register is kept, to be notified to registrar, 172.
- company's name to appear on outside of, 19.

- OFFICE, REGISTERED, OF COMPANY** (*continued*),
 memorandum of association to specify in what part of
 United Kingdom situated, 3, 4.
 register of members to be kept at, 14.
 copy of entries in colonial register to be sent to, 173.
 what is, for purpose of winding up unregistered company,
 85.
- OFFICE, REGISTRATION,**
 constitution of, 71.
- OFFICERS OF COMPANY,**
 not to be elected auditors of company, 235.
 to furnish requisite information to auditors, 235.
 to produce books, etc., to and answer questions of examiners
 into company's affairs, 26.
 liability of, for not filing return of allotments, etc., 221.
 for non-compliance with requirements as to registra-
 tion of charges, etc., 233.
 for wilfully concealing name of creditor entitled to
 object to reduction of capital, 150.
 destroying or falsifying books, etc., of company, 68.
 statements of company's affairs in winding up to be veri-
 fied by, 182.
 court may assess damages against delinquent, 187.
 examine, when believed to possess company's property,
 46.
 or to have been fraudulent in promotion, etc., of
 company, 184, 185.
 prosecute in certain cases, 68, 69.
- OFFICIAL RECEIVER,**
 who is, 166.
 may appoint special manager, 181.
 may call separate meetings of creditors and contributories,
 182.
 statement of company's affairs to be made to, 182.
 to submit to court preliminary report, 183.
 to take part in public examination of directors, etc., 184.
 may apply to court to convert voluntary winding up into
 winding up by court, 190.
- OFFICIAL SEAL FOR USE ABROAD,**
 company for transacting business abroad may prepare, 140.
 what to appear on face of, 140.
 to be affixed by authorised agent of company, 140.
 agent affixing to add date of sealing, 141.
- OMISSION**
 of name from register, remedy for, by application to judge
 in chambers, 15.
 to register charge, judge may grant relief for, 232.

ORDER

- confirming alteration of objects set out in memorandum of association, 175.
- reduction of capital, 146.
- discretionary powers of court as to making above, 146, 176.
- above, must be registered, 148, 177.
- for rectification of register, 16.
- for filing contract by way of relief for non-compliance with section 25 of Companies Act, 1867, 214.
- for winding up, operation of, 86.
 - not to be refused on ground that company has no assets, 276.
- date of, for purposes of Preferential Payments in Bankruptcy Act, 276.
- of court in winding up, may be made on hearing petition to wind up, 37.
- power of court to enforce, 48, 49.
- effect of, 38, 62.
- for inspection of books, etc., of company, 64.
- for payment of damages by delinquent directors, etc., 173, 199.
- for removal of liquidator appointed by company, 275.
- for substitution or addition of another person as liquidator, 275.
- for appointment of committee of inspection, 275.
- as to costs on application for such removal or appointment, 275.
- for appointment of receiver of company's property, 265.
- deferring date of dissolution of company voluntarily wound up, 277.
- avoiding dissolution made within two years, 277.
- such order to be filed within seven days, 277.

ORDINARY MEETING,

- provisions in Table A (revised), as to, 105, 106.

P.

PARTICIPATION IN PROFITS

- of new company, good consideration for sale of old company, 65.

PARTLY PAID-UP SHARES,

- company may have some of its shares, 152.
- how far deemed to be paid up to be stated in minute as to reduction of capital, 161.
- to be distinguished according to amount paid up in annual summary, 12, 133.
- from fully paid-up shares in return of allotments, 221.
- in prospectus, 223.
- in report prior to statutory meeting, 227.

PARTNERSHIP

of more than certain number illegal, unless registered under Companies Acts, 1.

PAST MEMBERS NOT LIABLE TO CONTRIBUTE IN WINDING UP

if begun more than one year after they ceased to be members, 17.

in respect of debts contracted after membership ended, 17.
if existing members can satisfy contributions required, 17.

PENALTY

for acting as director after becoming disqualified, 278.

for carrying on business without having registered office, 18.

for commencing business, or exercising borrowing powers, in contravention of provisions of section 6 of Companies Act, 1900, 220.

for default in complying with requirements as to filing return of allotments, 221.

relief from such default, 257.

with requirements as to affixing and use of name of company on offices, seal, etc., 19.

for default in disclosing name or debt of creditor entitled to object to reduction of capital, 150.

number, etc., of altered shares in memorandum of association subsequently issued, 151.

to director on election that his liability is unlimited, 145.

for default in keeping register of directors or managers, 21.
of members with particulars required, 11.

for default in publishing statement in Form D, 20.

for default in registering certain companies required to be registered, 92.

mortgages, etc., created by company, 233.

for default in supplying registrar with list of members or annual summary, 13.

with notice of increase of capital or number of members, 15.

with particulars of charge requiring registration, 263.

with register of directors, etc., 21.

with copy of special resolution, 24.

with notice of dissolution of company, 46.

with notice of final meeting in winding up having been held, 60.

with document requiring registration under Memorandum of Association Act, 1890, 177.

with total of secured debts created before 1st July, 1908, 266.

- PENALTY** for default in supplying registrar (*continued*).
with notice of appointment of receiver of company's property, 265.
as liquidator, by the liquidator, 274.
for failure to file copy of order avoiding or deferring dissolution, 277.
to file copy of prospectus, 255.
to hold annual general meeting, 273.
for improper use of "limited," 285.
for false statements in returns, etc., 237.
for falsification or destruction of books, etc., of company, 68.
for forgery, etc., of share warrant or coupon, 155.
for fraudulently engraving plates for making share warrants, etc., 156.
personating owner of share warrant, etc., 155.
for giving false evidence, 69.
non-delivery of certificates, 256.
non-compliance by foreign companies with requirements of section 35 of 1907 Act, 280.
for refusal to supply copy of memorandum or articles of association to member on payment of one shilling, 9.
of register or list of members to applicant, 14.
for refusal to allow inspection of register or list of members, 14.
register of mortgages, etc., 20, 264.
books, etc., of company by inspectors, 26, 27.
imposed under Companies Act, 1862, may be applied towards payment of costs or reward of informer, 28.
offences punishable by, to be prosecuted summarily, 285.
under section 10 of Companies Act, 1900, not to derogate from liability at common law, 226.
honest ignorance to be a defence to, 226, 278.
- PERPETUAL DEBENTURES**,
issue of, legal, 267.
- PERSONAL REPRESENTATIVES**
may transfer interest of dead member, 11.
when liable to company in respect of dead contributory, 33, 88.
when deemed to be contributories, 33, 88.
provisions as to placing on list of contributories, 42.
consequences of default by, in paying money ordered, 44.
- PERSONALTY**,
shares of company to be, 10.

PERSONATION

of bearer, etc., of share warrant, felony, 41.

PETITION,

application for winding up to be by, 36.

who may present, 36, 157, 190.

presentation of, to be commencement of winding up, 37.

equivalent to act of bankruptcy of individual, 67.

court may dismiss, adjourn, etc., 37.

for order to confirm resolution to reduce capital, 146.

alteration of objects in memorandum of association,
175.

PLACE

where limited company carries on business to have com-
pany's name affixed outside, 19.

where unregistered company carries on principal business
to fix place of registration, 85.

POLICY OF INSURANCE,

in restriction of individual liability not invalidated by
Companies Act, 1862, 17.

POLL

may be demanded by three members at meeting for passing,
etc., of special resolution, 23, 274.

unless articles require five or fewer, 274.

provisions as to, in Table A (revised), 108, 109.

POST,

service of notices, etc., on company, may be by, 27.

POWER OF ATTORNEY,

company may give, for execution of deeds abroad, 25.

company may compensate for loss owing to forged, 208.

POWER OF COMPANY

to borrow, restrictions on beginning to, 220.

penalty for illegal exercise of, 220.

to hold land, 8, 10, 81.

POWERS

of court given by Companies Act, 1862, to be cumulative,
48.

to enforce orders, 48.

of judge in chambers equal to those of court, 36.

of liquidators in voluntary winding up, 58, 59, 64-67.

in winding up by court, 40, 41, 64, 65, 181, 189, 194,
195.

in winding up under supervision of court, 62, 65.

PREFERENCE, FRAUDULENT,

act amounting to, to be invalid, 67.

PREFERENCE SHAREHOLDERS

- to have same rights of receipt and inspection of reports,
etc., as ordinary shareholders, 273.
- except in case of private companies, 273.
- or companies registered before 1st July, 1908, 273.

PREFERENTIAL PAYMENTS IN BANKRUPTCY,

- priority of certain debts in winding up of company, Appendix.
- when winding up to begin for this purpose, 276.

PRELIMINARY EXPENSES

- to be stated in prospectus, 254.
- unless published one year after date of commencing
business, 226.
- account of, to be included in first report, 272.

PRESENTATION OF PETITION,

- to be commencement of winding up, 37.
- equivalent to act of bankruptcy of individual, 67.

PRICE

- to be paid to member dissenting to sale of company's
business, how fixed, 67.

PRIORITY OF COSTS,

- court may determine in compulsory winding up, 46.
- to all claims on company's assets in voluntary winding
up, 60.

PRIORITY OF DEBTS,

- in winding up of company, Appendix.

PRIVATE COMPANY,

- definition of, 281.
- to consist of from two to fifty members, 281.
- must restrict transfer of its shares, 281.
- may not offer its shares or debentures to public, 281.
- exemption from filing statement in lieu of prospectus, 252.
- restrictions imposed by sections 2, 6 and 11 of Com-
panies Act, 1900, 251, 252.
- filing report prior to statutory meeting, 273.
- inclusion of balance sheet in annual summary, 273.
- extending certain rights of ordinary shareholders to
other share and stock holders, 273.
- conversion of, into public company, 281.

PROCEEDINGS, LEGAL,

- by or against company not to be affected by change of
name, 6.
- security for costs may be required from limited company
taking, 30.
- penalties imposed under Companies Act, 1862, may be
ordered to be applied towards costs of, 28.

PROCEEDINGS, LEGAL (*continued*),

minutes of resolutions, etc., duly entered in company's
 books to be evidence in, 29.
 by company to recover calls from member, special matter
 need not be alleged in, 30.
 in winding up, liquidator may be appointed to bring, etc.,
 39, 40.
 restrictions, etc., of court on further, 37, 38, 84, 88.
 transfer of, to another court, 179.

PROCEEDINGS OF COMPANY IN GENERAL MEETING,

to be duly entered in books, 29.
 to be deemed *prima facie* valid, if so entered, 29.
 provisions as to, in Table A (revised), 106, 107, 108.

PROFIT AND LOSS,

statement of, need not be included in balance sheet, 272.
 provision as to, in Table A (revised), 118.

PROFITS,

interest in, of holders of founders', etc., shares, to be stated
 in prospectus, 223.
 provision for sharing, other than as member, void where
 company is limited by guarantee, 237.
 participation in, of new company, good consideration for
 sale of old company, 66.
 accumulated, capital may be reduced by returning to
 shareholders, 168.
 amount thereof to be stated in statement of account, 169.
 provisions as to appropriation of, in Table A (revised), 116,
 117.

PROMISSORY NOTE,

when deemed to have been made, etc., by company, 21.
 liquidator may make, etc., in name of company, 40.

PROMOTERS,

definition of, 206.
 have same right of paying underwriting commission as
 company promoted has, 282.
 liable for untrue statements in prospectus, 204.
 amongst themselves, though tortfeasors, 207.
 except in cases of fraudulent misrepresentation, 278.
 court may assess damages against delinquent, 187.

PROMOTION MONEY

to be stated in prospectus,

PROPERTY OF COMPANY,

interest of holders of founders', etc., shares in, to be stated
 in prospectus, 253.
 charges, etc., on, to be entered in register of mortgages,
 20, 260.

PROPERTY OF COMPANY (*continued*),

foreign, comprised in charge, etc., requirements as to registration of, 260.
on registration under Part VII. to vest in company as incorporated, 81.
disposition of, between commencement of and order for winding up, void, 63.
during winding up, power of court over persons possessing, 42, 46.
official receiver may sell, 40.
how to be applied in voluntary winding up, 55.
custody of, 39, 40.
receiver or manager of, to file accounts, 283.

PROPOSED DIRECTORS,

restrictions on naming persons as, in prospectus, 216.
names, etc., of, to be stated in prospectus, 223.

PROSECUTION

of guilty directors, members, etc., in voluntary winding up, 69.
in winding up by or under supervision of court, 68.

PROSPECTUS,

definition of, 238.
particulars required to be stated in, 252.
commission paid for underwriting to be disclosed in, 221, 258.
to be dated, 222.
date on, to be date of publication of, 222.
those only to be named in, as directors, who have consented, 216.
persons authorising use of name in, liable as directors, 204.
persons improperly named in, entitled to indemnity from company, 206.
liability of directors, etc., for statements in, 204, 205.
for non-compliance with requirements as to, 226.
copy of, to be signed by all directors, etc., and filed before publication, 222.
not to be issued until filed, 223.
penalty for issuing without filing, 255.
terms of contract referred to in, not to be varied before statutory meeting, 227.
condition as to waiver of requirements as to, void, 226.
exempted from certain requirements, if issued more than one year after business commenced, 217.
if only offers further shares, etc., to existing members, 225, 255.
if published as advertisement in newspaper, 226.
statement in lieu of, by what companies required, 251.
to be duly signed and filed, 251.

- PROSPECTUS** statement in lieu of (*continued*),
 specified form of, 286.
 particulars to be stated in, 251, 286.
 to be verified by statutory declaration, 288.
 to be filed by public company, which issues no prospectus, before commencing business, 220, 289.
 commission paid for underwriting to be disclosed in, 258.
 to be filed by private before conversion into public company, 281.
 of foreign company trading in United Kingdom and using word "limited," 280.
- PROVIDENT SOCIETY**
 to publish statement in Form D at certain times, 20, 123.
- PROVISIONAL CONTRACT**
 of company not entitled to commence business, 220.
- PROXY,**
 voting to be by, if allowed by company's regulations, 23.
 provisions as to voting by, in Table A (revised), 109, 110.
- PUBLIC COMPANY,**
 conversion of private company into, 281.
- PUBLICATION,**
 official, of limited company, to bear company's name, 19.
 of registration of minute, etc., confirming reduction of capital, 148.
 of notice in *Gazette* that company will be struck off as defunct, 170.
 that company has been struck off as defunct effects dissolution of company, 170.
 of prospectus as advertisement in newspaper, effect of, 226.
- PURCHASE**
 by company of interest of member dissenting from proposed reconstruction, 66.
 price to be paid such member for, how fixed, 67.
 by company of interest of member dissenting from alteration of its objects, 176.
- PURCHASE MONEY,**
 particulars as to, to be stated in prospectus, 253.
 to include consideration for a lease, 225.

Q.

- QUALIFICATION OF DIRECTOR**
 to appear on memorandum of association under his hand, 216.
 payments made, or agreed to be made, for obtaining, to be stated in prospectus, 254.
 should be obtained at least within two months of appointment, 217.

QUALIFICATION OF DIRECTOR (*continued*)
 not satisfied by holding share warrants to bearer, 154.
 to be deemed valid though defect be subsequently discovered, 29.

QUALIFICATION SHARES,
 contract to take, etc., to be filed with registrar, 217.
 number of, to be stated in prospectus, 253.

QUORUM
 of directors, provisions of Table A (revised), as to, 115.
 of members, provisions in Table A (revised), as to, 94, 107.

R.

RATE PER CENT. OF COMMISSION
 for underwriting to be authorised by articles of association, 222.
 and stated in prospectus, 222, 254.
 or in statement in lieu thereof, 258.
 and in annual summary, 257.
 not to exceed authorised and disclosed rate, 222.

RECEIPT FOR DIVIDENDS
 by joint-holders of shares, provisions in Table A (revised), as to, 117.

RECEIVER OR MANAGER OF PROPERTY OF COMPANY,
 notice of appointment of, to be given to registrar within seven days, 265.
 penalty for failure to give such notice, 265.
 accounts of, to be filed half-yearly, 283.
 notice of ceasing to act to be filed, 283.
 penalty for failure to file accounts, or notice of ceasing to act, 283.

RECONSTRUCTION OF COMPANY
 by sale of property of company to another company, 65.

RECONVERSION OF STOCK INTO SHARES,
 how company may effect, 288.
 notice of, to be given to registrar, 18.
 provisions in Table A (revised), as to, 101.

RECTIFICATION OF REGISTER
 of members, court may make order for, 15, 42.
 due notice of, to be given to registrar, 16.
 of mortgages, court may make order for, 282.

REDEMPTION OF DEBENTURES,
 power of, not necessary to their validity, 267.
 not to preclude company from reissuing, 267.
 repayment of advances secured by deposit of debentures, not to operate as, 267.

REDUCTION OF CAPITAL,

- power to effect, by special resolution with sanction of court, 146.
- provisions in Table A (revised), as to, 105.
- minute showing certain particulars of, to be approved by court, 148.
- minute and order to be registered, 148, 168.
- company making, to add "and reduced" at end of name, 146.
- but court may dispense with "and reduced" in certain cases, 161.
- court may make order for, on terms, 161.
- creditors may object to, 147.
- when court may disregard creditors' objections, 161.
- position of creditor ignorant of, 149.
- if paid up, need not affect liability on shares, 160.
- by cancellation of unissued capital, 161.
- by return of accumulated profits, 168.
- payment of interest out of capital during construction, not to operate as, 259.

REFERENCE TO ARBITRATION

- of any matter in dispute, company may make, 31.
- to be governed by provisions of Railway Companies Arbitration Act, 1859, 32.

REFUSAL TO REGISTER AS MEMBER,

- application to judge in chambers on, 16.

REGISTER OF COMPANIES,

- new name of company to be substituted on, for old one, 6.
- names of defunct companies may be struck off, 170, 236.
- company struck off as defunct may be restored to, 171.
- licence of Board of Trade to omit "limited" in certain cases, 151.
- revocation of such licence, 283.

REGISTER OF DIRECTORS AND MANAGERS

- of company to be kept at registered office and sent to registrar, 21.
- of foreign company, trading in United Kingdom, 279.

REGISTER OF MEMBERS,

- what to contain, 11.
- subscribers of memorandum of association to be entered on, 10.
- entry of name of person agreeing to be member on, 10.
- name of transferee of share to be entered on, at request of transferor, 153.
- remedy for improper or omitted entry in, by application to judge in chambers, 16, 42.
- notice of order rectifying, to be given to registrar, 16.

REGISTER OF MEMBERS (*continued*),

- bearer of share warrant surrendering warrant entitled to be put on, 154.
- member to whom warrant issued to be struck off, 154.
- entries to be made in, on issue of warrant, 154.
- may be closed upon advertising notice in local paper, 14.
- inspection of, to be gratis to members, 14.
- on payment of one shilling to other persons, 14.
- immediate, judge in chambers may compel, 14.
- copy of, to be furnished at rate of sixpence per one hundred words, 14.
- penalty for refusing inspection or copy of, 14.
- to be *prima facie* evidence of authorised contents, 16.
- colonial, certain companies may keep, 158.
- notice of place of keeping to be given to registrar, 172.
- to be deemed part of company's register, 173.
- to be *prima facie* evidence of contents, 173.
- regulations as to entries in, 173.
- company may discontinue or regulate keeping of, 173, 174.

REGISTER OF MEMORANDA AND ARTICLES OF ASSOCIATION

- to be kept, 8.

REGISTER OF MORTGAGES,

- affecting company's property to be kept, 20, 261.
- to be open to inspection, 20, 264, 269.
- when judge may order inspection of, 20.
- index to, to be kept, 233.
- memorandum of satisfaction may be entered on, 233.
- appointment of receiver or manager, to be entered on, 265.
- or of order for such appointment, 265.
- secured debts created before 1st July, 1908, to be entered on, 265.

REGISTERED OFFICE OF COMPANY,

- every company to have, 18.
- situation or change thereof, to be notified to registrar, 18.
- until registrar notified, provisions of Companies Acts not complied with, 18.
- company's name to appear on outside of, 19.
- memorandum of association to specify in what part of United Kingdom situate, 3, 4
- register of members to be kept at, 14.
- copy of entries in colonial register to be sent to, 173.
- what is, for purpose of winding up unregistered company, 85.

REGISTRAR,

- appointment, removal, remunerative, etc., of, 71, 72.
- documents kept by, to be open to inspection, 72.

REGISTRAR (*continued*),

- certified copies of such documents to be supplied by, 72.
- power of, to strike off name of company as defunct, 170, 236.
- sanction of, required for change of name of company in certain cases, 8, 80.
- to give certificate of incorporation of company, that limited company is limited, 8, 80.
- of registration of minute, etc., of reduction of capital, 148, 168.

REGISTRATION,

- compulsory, if association, etc., exceed certain number, 1.
- in case of certain insurance and other companies, 91.
- consequences of default to such companies, 91.
- of memorandum of association, to what extent it binds company and members, 5.
- of altered memorandum of association, etc., 176.
- effect of, is incorporation of company, 8, 80.
- certificate of incorporation to be conclusive as to compliance with, 217.
- of company under name identical with or nearly resembling that of existing company, forbidden, 9.
- o altered name of company, to be made when required, 6.
- of order of court confirming reduction of capital, 146, 148.
- of minute showing particulars as to reduced capital, 148.
- notice of, to be published as court directs, 148.
- and certified by registrar, 148.
- of memorandum before returning accumulated profits, 168.
- a new, of company, as limited company, 163.
- not prevented by provisions in charter, etc., of company forbidding, 166.
- former registration to be closed on, 167.
- by foreign companies trading in United Kingdom, of certain particulars, 279.
- of existing companies, regulations as to, 75, 76, 77.
- requisitions for obtaining, 77, 78.
- notice to be given to customers of banking company, prior to, 79.
- effect of, 80, 81, 82, 83.
- fees payable on, by company with share capital, 8, 121.
- by company without share capital, 8, 122.
- regulations as to constitution of office, etc., for, 71.

REGULATIONS OF COMPANY,

- alteration of, by special resolution, 22.
- where formed under Joint Stock Companies Acts, 74.
- new, valid as though originally in articles of association, 22.

REISSUE OF DEBENTURES,

- which have been redeemed, legal, (except in certain cases), 267.
- gives holder same rights as though it were original issue, 267.
- transfer to keep debentures alive, to be deemed a, 267.
- equivalent to new issue for stamp purposes, 268.

RELIEF

- for director who has acted honestly and reasonably, 278.
- for non-compliance with section 25 of Companies Act, 1867, 214.
- section 7 of Companies Act, 1900, 257.
- for omission to register or accidental misstatement as to charge, 232.

RELIGION,

- company formed to promote, may only hold two acres without licence, 10.
- may be licensed to omit "limited," 151.

REMUNERATION

- of auditors, by whom and when to be fixed, 234, 235.
- of directors, provisions in articles of association as to, to be stated in prospectus, 253.
- unless prospectus is published more than one year after date of commencing business, 225.
- of liquidators, to be settled by court in winding up by court, 39.
- by company, in voluntary winding up, 55.
- of special manager in liquidation, 181.

REORGANISATION OF CAPITAL,

- special resolution confirmed by court, required for, 282.
- provisions for protection of prior interests, 282.
- copy of order confirming, to be filed, 282.

REPORT

- of auditors, as to company's accounts what to state, 270.
- to be open to inspection, 270, 273.
- to be attached to, or referred to, in balance sheet, 270.
- to be read at general meeting, 270.
- false statement in, misdemeanour, 237.
- of directors, to be sent to members seven days before statutory meeting, 227.
- including holders of preference shares and debentures, 273.
- except in private companies or those registered before 1st July, 1908, 273.
- what particulars to contain, 213.
- to be certified as to certain particulars by auditors, 228.

RESOLUTION (*continued*),

- delegation of powers, etc., to creditors by, 57.
- to wind up voluntarily, notice of, to be published in
Gazette, 55.
- liquidators may call meetings to obtain company's sanction
by, 58.
- as to disposition of books, etc., of company voluntarily
wound up, 63.
- special, definition of, 23.
- declaration of chairman as to carrying, conclusive
unless poll is demanded, 23.
- for altering regulations of company, 22.
- copy thereof to be sent to registrar, 24.
- to be embodied in articles of association, 24.
- if no articles of association, to be supplied to members
for one shilling, 24.
- for altering objects or constitution of company, 175.
- for authorising use of foreign official seal, 141.
- for conversion of private into public company, 281.
- for making liability of directors unlimited, 145.
- for payment of interest out of capital in certain cases,
259.
- to be subject to sanction of Board of Trade, 259.
- for providing reserve capital, 164.
- for reconstructing company, 65.
- for reduction of capital, subject to confirmation by
court, etc., 146.
- for re-organisation of capital, subject to confirmation
by court, 282.
- not to take effect until order of court is filed, 282.
- for return of accumulated profits to shareholders, 168.
- particulars thereof to be registered, 168.
- for sanctioning change of name of company, 6.
- for subdividing capital into smaller shares, 150.
- for winding up voluntarily, 54.
- notice of such, to be advertised in *Gazette*, 55.

RESTORATION

- to register of name of company struck off as defunct, 171.
- by annulment of dissolution within two years of date
thereof, 277.

RESTRICTIONS

- by contract or policy of insurance on member's liability,
valid, 17.
- company may guard against forged transfers by reason-
able, 209.
- company may impose reasonable on debenture holders'
inspection of register, 269.
- on transfer of shares, necessary in case of private com-
panies, 281.

RETURN OF ACCUMULATED PROFITS,
capital may be reduced by, 168.

RETURNS

of allotments, to be filed within one month of allotment, 221.
particulars to be given in, 221.
false statements in, a misdemeanour, 237.

REVOCATION

of Board of Trade licence to limited company to omit
"limited," 283.

RIGHTS

of company not to be affected by change of name, 6, 9.
of contributories, *inter se*, to be adjusted in winding up,
46, 56.
of preference, etc., shareholders to be protected on re-
organisation of company, 282.

S.

SALE OF BUSINESS OF COMPANY

to another company, shares may be taken as considera-
tion for, 65.

SANCTION

of Board of Trade to enable companies not for gain to
hold over two acres of land, 10.
form of licence sanctioning, 136.
to dispense with "limited," 151.
revocation of, 283.
to alter name, 6.
to alter letters patent constituting company, 82.
to pay interest out of capital in certain cases, 259.
of liquidator to transfer of shares during winding up, 55.
of registrar to change of name of company, 9.

SATISFACTION OF DEBT SECURED BY REGISTERED CHARGE,

memorandum of, to be entered on register, 233.

SCHEME OF ARRANGEMENT WITH CREDITORS,

power of liquidators to make, 64.
when binding in voluntary winding up, 57.
right of appeal against, 58.
court may call meeting to decide as to, 145.
and may sanction if carried by three-fourths majority,
159.

SCIENCE,

company formed to promote, may only hold two acres
without licence, 10.
form of such licence, 136.
may be licensed to omit "limited," 151.

SCOTLAND,

- order made in England to be enforced in, 49.
- court may order examination of persons in, 52.
- recovery of penalties in, 28.

SEAL, COMMON,

- incorporated company to have, 8, 81.
- company's name to be legibly engraved on, 19.
- company may issue bearer warrants under, 153.
- company may execute deeds under, 156.
- provisions in Table A (revised), as to use of, 113.
- liquidator may use, in winding up, 40.
- seal of company's attorney abroad, when effective as, 25.
- for use abroad, company may prepare official, 140.
- what to appear on face of, 140.
- to be affixed by authorised agent of company, 140.
- agent affixing, to add date of sealing, 141.

SECRETARY OF COMPANY,

- name, address and description of, to appear in first report, 228.
- not to be elected as an auditor, 235.
- to furnish requisite information to auditors, 235.
- to produce books, etc., to and answer questions of examiners into company's affairs, 26.
- liability of, for not filing return of allotments, etc., 221.
- for non-compliance with requirements as to registration of charges, etc., 233.
- for wilfully concealing name of creditor entitled to object to reduction of capital, 150.
- destroying or falsifying company's books, etc., 68.
- signature of, to annual list and summary, 234.
- statutory declaration by, as to formation of company, 216.
- as to compliance with conditions precedent to commencing business, etc., 220.
- verification of statement of company's affairs in winding up by, 182.

SECURITY,

- deposit of debentures as, for company's debt, not an issue of debentures at a discount, 262.
- for advances, effect of payment off of advances, 267.
- for costs, when plaintiff company may be ordered to give to defendant, 30.
- prospective creditor petitioning to wind up may be ordered to give, 276.
- of Board of Trade inquiry prior to sanctioning payment of interest out of capital, 259.

SERIES OF DEBENTURES,

- regulations as to registration of, 262.

SERVICE OF NOTICES, Etc.,

- on company may be by post, 27.
- proof of proper addressing, prepaying and posting of notice,
etc., to be sufficient proof of, 27.
- provisions as to, in Table A (revised), 119, 120.
- on foreign company to be on agent in United Kingdom, 279.

SET-OFF IN WINDING UP,

- when contributory may avail himself of, 18, 43.
- when director with unlimited liability may avail himself
of, 144.

SHARES,

- allotment of, equal to minimum subscription to be made
before company commences business, 220, 251.
- return of particulars of, to be filed with registrar, 221.
- relief for non-filing, 257.
- what particulars to appear in return, 221.
 - when consideration for, not wholly cash, 221.
 - where contract as to, not reduced into writing, 256.
- application for, amount payable on, to be at least 5 per
cent. of nominal amount thereof, 219, 251.
- calls on, amount of, made, received, etc., to appear in
summary, 12, 123.
- may be varied in different shares, 152.
- time of payment of, may be varied in different shares,
152.
- power of directors to make, according to Table A
(revised), 96, 97.
- such power to extend to unpaid capital increased by
return of profits, 168.
- when shareholder may compel retention of money to
represent future calls, 168.
- liability to satisfy, to be specialty debt, 32.
- court may make, in winding up by or under super-
vision of court, 43, 62, 189.
- liquidator may make in, voluntary winding up, 56.
- certificates of, to be issued within two months of allotment,
256.
- penalty for default, 256.
- conversion of, into stock, power of company to effect, 5.
- notice of, to be given to registrar, 13.
- effect of, 13.
- provisions in Table A (revised), as to, 101, 102.
- division of, into shares of larger amount, 5.
- of smaller amount, 150.
- forfeiture of, provisions in Table A (revised), as to, 99, 100.
- issue of, particulars to be stated in prospectus as to, 252.
- where consideration for, differs, difference to be shown
in annual summary, 234.

SHARES, issue of (*continued*),

- new, when limited company has power to make, 5.
- offer of, simultaneously with debentures, lawful, 256.
- qualification, contract to take, etc., to be filed with registrar,
217, 251.
- number of, to be stated in prospectus, 253.
- registration of, in colonial register, 173.
- reorganisation of capital by consolidation of different classes
of, 282.
- by division of, into different classes, 282.
- transfer of, mode of, to be regulated by company, 10.
- regulations as to, in Table A (revised), 97, 98.
- of deceased member by personal representatives, 11.
- to be registered at request of transferor, 153.
- or transferee, 15.
- after commencement of winding up, void, 55, 63.
- where company registered under Joint Stock Companies
Acts, 75.
- in private company to be restricted, 281.
- transmission of, regulations in Table A (revised), as to, 98,
99.
- underwriting, payments for, when lawful, 221, 258.
- when not offered for public subscription, 282.
- unissued, cancellation of, may be sanctioned by memo-
randum of association, 161.

SHAREHOLDERS,

- list of, to be accessible at statutory meeting, 228.
- auditors to report to, on accounts, etc., of company, 270.
- accumulated profits may be returned to, 168.
- may require company to retain money actually paid on
their shares, 169.
- of company required to be registered to be paid no divi-
dends before registration, 92.
- protection of rights of special classes of, on reorganisation
of capital, 282.

SHARE WARRANT,

- bearer of, entitled to shares specified therein, 153.
- and may transfer them by delivery, 153.
- may be registered as member on giving up warrant,
154.
- not to be thereby qualified as director, etc., 154.
- fraudulent personation of, to be felony, 154.
- forgery of, to be felony, 155, 156.
- particulars as to, to be stated in annual summary, 155.
- stamp on, 155.
- provisions as to, in Table A (revised), 102, 103.

SHOW OF HANDS,

- provisions in Table A (revised), as to, 108, 109.

- SIGNATORIES OF MEMORANDUM OF ASSOCIATION,**
 names, etc., of, to appear in prospectus, 223.
 except when published as advertisement in newspaper,
 226.
- SIMULTANEOUS OFFER**
 of shares and debentures lawful, 256.
- SOCIETY,**
 deposit, provident, or benefit, to publish statement in Form
 D at certain times, 20, 123.
- SOLICITOR**
 to make statutory declaration of compliance with requisitions as to registration, 216.
 liquidator may employ, in winding up by court, 189.
- SPECIAL RESOLUTION,**
 definition of, 23.
 declaration of chairman as to carrying, conclusive unless
 poll demanded, 23.
 for altering regulations of company, 22.
 copy thereof to be sent to registrar, 24.
 to be embodied in articles of association, 24.
 if no articles of association, to be supplied to members for
 one shilling, 24.
 for altering objects or constitution of company, 175.
 for authorising use of foreign official seal, 141.
 for conversion of private into public company, 281.
 for making liability of directors unlimited, 145.
 for payment of interest out of capital in certain cases,
 259.
 to be subject to sanction of Board of Trade, 259.
 for providing reserve capital, 164.
 for reconstructing company, 65.
 for reduction of capital, subject to confirmation by court
 etc., 146.
 for reorganisation of capital, subject to confirmation by
 court, 282.
 not to take effect until order of court is filed, 282.
 for return of accumulated profits to shareholders, 168.
 particulars thereof to be registered, 168.
 for sanctioning change of name of company, 6.
 for subdividing capital into smaller shares, 150.
 for winding up voluntarily, 54.
 notice thereof to be advertised in *Gazette*, 55.
- SPECIFIC PERFORMANCE**
 of contract to subscribe for debentures, 268.
- STAMPS,**
 memorandum and articles of association to bear, as though
 deeds, 5, 7.

STAMPS (*continued*)

- on prescribed particulars of contract of allotment not payable in cash, 256.
- on share warrants to bearer, 141.
- on transfer of shares on colonial register, 174.
- fees on filing forms, etc., to be paid by, 240 *n*.

STATEMENT,

- making false, in return, etc., to be misdemeanour, 237.
- in Form D, certain companies and societies to make, 20, 123, 282.
- as to secured debts created before 1st July, 1908, 265.
- as to shares, etc., in share warrants to be registered, 154.
- in prospectus, liability of directors, etc., for, 204.
- in winding up of company's affairs, 182.
- continuing for more than one year, of liquidator, 190.
- of affairs, to be included in annual summary of every public company, 272.
- including foreign companies trading in United Kingdom, 279.
- to be in the form of balance sheet and audited, 272.
- what particulars to contain, 272.

STATEMENT IN LIEU OF PROSPECTUS,

- by what companies required, 251.
- to be duly signed and filed, 251.
- specified form of, 286.
- particulars to be stated in, 251, 286.
- to be verified by statutory declaration, 288.
- to be filed by public company which issues no prospectus, before commencing business, 220, 289.
- commission paid for underwriting to be disclosed in, 258.
- to be filed by private before conversion into public company, 281.

STATUTORY DECLARATION

- by private converting itself into public company, 281.
- required of compliance with requisitions as to registration, 216.
- with conditions precedent to commencing business, etc., 220, 289.
- verifying statement in lieu of prospectus, 288.

STATUTORY MEETING,

- what is, 227.
- to be held between one and three months after company entitled to commence business, 228.
- list of shareholders to be open to inspection at, 228.
- discussion of matters as to formation of company to be allowed at, 228.

STATUTORY MEETING (*continued*)

may be adjourned as required, 214.

if not duly held, shareholder may petition court to wind up company, 229.

STAY OF PROCEEDINGS,

court may order after petition to wind up granted, 37, 88.

creditor or contributory may apply for, in winding up, 38.

order for winding up by or under supervision of court, to operate as, 37, 62.

STOCK,

conversion of shares of limited company into, 5.

provisions in Table A (revised), as to, 100, 101, 102.

notice of conversion to be given to registrar, 13.

effect of conversion, 13.

reconversion of, into shares, 238.

particulars as to, required from company registering under Part VII., 79.

warrants for, may be issued to bearer, 153.

included in warrants, dividends on, may be paid by coupon or otherwise, 153.

bearer of warrant entitled to, 153.

transferable by delivery, 153.

statement as to, to be registered, 154.

SUBDIVISION OF SHARES

into shares of smaller amount, 150.

statement as to, in subsequent memorandum of association to be altered accordingly, 151.

SUBSCRIBER OF MEMORANDUM OF ASSOCIATION

to take at least one share in company limited by shares, 3.

must append to his name number of shares taken, 3.

agrees to become member of company by subscribing, 10.

how to execute memorandum of association, 5.

SUBSCRIPTION,

commission for procuring, when lawful, 221.

to be disclosed in prospectus, 254.

for debentures, particulars of, to be registered, 262.

minimum, definition of, 218.

subscription of amount of, condition precedent to allotment, 218, 251.

to be fixed and named exclusively of payments other than cash, 218, 251.

allotment of fully paid shares equal to, may entitle company to commence business, etc., 220.

simultaneous offer of shares and debentures for, lawful, 256.

private company's articles must prohibit invitation for public, 281.

- SUB-UNDERWRITERS,
commission paid to, need not be stated in prospectus, 254.
- SUCCESSION,
company to have perpetual, when registered, 8.
- SUMMARY IN ANNUAL LIST,
what to contain, 12, 234, 257, 272.
particulars as to share warrants, to be contained in, 155.
to be signed by manager or secretary of company, 234.
copy of, to be forwarded to registrar on completion, 12.
- SUPERVISION OF COURT,
winding up under, 60, 61, 62.
- SURPLUS,
distribution of, after adjustment of rights of contributories,
46.
funds, investment of, in winding up, 191.
- SURRENDER OF SHARE WARRANT
may be necessary before holder can be registered as
member, 154.
date of, to be entered on register, 154.
- SUSPENSION OF BUSINESS
for one year, ground for winding up company 34.
renders company liable to be treated as defunct, 170.

T.

- TABLE A (REVISED),
contents of,
accounts, 117, 118.
alteration of capital, 104, 105, 106.
audit, 119.
business, 93.
calls on shares, 96, 97.
conversion of shares into stock, 101, 102.
directors, generally, 118.
disqualification of, 113.
powers and duties of, 111, 112.
proceedings of, 115, 116.
rotation of, 113, 114, 115.
dividends, 116, 117.
forfeiture of shares, 99, 100.
lien, 95.
notices, 119, 120.
proceedings at general meetings, 106, 107, 108.
reserve, 117, 118.
seal, 113.
shares, 93, 94, 95.
share warrants, 102, 103.

TABLE A (REVISED), contents of (*continued*),
 transfer and transmission of shares, 97, 98, 99.
 votes of members, 109, 110.
 provisions of, may be adopted in articles of association, 6.
 apply only so far as not affected by articles of
 association, 7.
 may be altered by special resolution of company, 22.
 may be altered generally by Board of Trade, 31.
 as to meetings, apply where company has no regula-
 tions, 24.
 not to apply to companies formed and registered
 under Joint Stock Companies Acts, 74.
 or to companies not formed under Companies
 Acts unless specially adopted, 82.

TABLE B,
 contents of, 121.
 fees in, payable to registrar, where capital is divided into
 shares, 8.
 amount of, not to be increased by Board of Trade, 31.

TABLE C,
 contents of, 108.
 fees in, payable to registrar, where capital is not divided
 into shares, 8.
 amount of, not to be increased by Board of Trade, 31.

TITLE TO SHARES OR STOCK,
 certificate to be evidence of, 14.
 (where consideration for allotment not wholly cash) written
 contract constituting, to be filed, 221.
 provisions in Table A (revised), as to, 98, 100.

TRANSFER,
 forged, company may pay compensation for loss owing to,
 208.
 company may make reasonable rules to guard against,
 208.
 company compensating for, to stand in place of
 person compensated, 209.
 of all effects of company to trustees for benefit of creditors,
 void, 68.
 of business of company to another company, shares may
 be consideration for, 65.
 of debentures, from nominee of company under certain
 circumstances, to be a reissue, 267.
 of proceedings in winding up to another court, 179.
 of shares, mode of, to be regulated by company, 10.
 regulations in Table A (revised), as to, 97, 98, 101,
 104.
 of deceased member by personal representatives, 11.

INDEX.

425

- TRANSFER of shares** (*continued*),
to be registered at request of transferor, 153.
or transferee, 15.
after commencement of winding up, void, 55, 63.
where company registered under Joint Stock Companies Acts, 75.
of private company, to be restricted, 281.
- TRANSMISSION OF SHARES**,
regulations in Table A (revised), as to, 98, 99, 104.
- TRUST DEED FOR SECURING DEBENTURE ISSUE**,
to be registered, 260.
copy of, to be supplied to debenture holder, if desired, 269.
penalty for refusal to supply, 269.
- TRUSTS**,
notice of, not to be entered on register, 13.
- U.**
- UNCALLED CAPITAL OF COMPANY**,
charge on, to be registered, 260.
may be created as reserve capital, 164.
- UNDERTAKING TO CONTRIBUTE**
by members of company limited by guarantee, 5.
- UNDERWRITING SHARES**,
when lawful, 221.
when unlawful, 222.
amount paid for to be stated in prospectus, 222, 224.
- UNDIVIDED PROFITS**,
when, may be returned in reduction of paid-up capital, 168.
- UNISSUED CAPITAL**
may be cancelled so as to reduce capital, 161.
- UNITED KINGDOM**,
requirements as to companies established outside, 279.
- UNLIMITED COMPANY**,
what is, 4.
what memorandum of association of, must contain, 4.
must have articles of association, 6.
form of memorandum and articles of association, 132.
- UNLIMITED COMPANY**
may re-register as limited company, 163.
re-registration not to affect prior liabilities, etc., of, 164.
on re-registration may increase nominal or provide reserve capital, 164.
- UNLIMITED LIABILITY**
of directors in limited company, 143, 144, 145.
of limited banking company in respect of notes issued, 164.
of members, 4.

UNQUALIFIED PERSON

acting as director, penalty on, 218.

V.**VACANCY**

among auditors, provisions as to filling up, 235.

among directors, provisions in Table A (revised), as to, 114,
115.

among liquidators, provisions as to filling up, 57, 59.

VALIDITY

of acts, appointments, etc., of directors, etc., though irregularity be subsequently discovered, 29.
provisions in Table A (revised), as to, 116.

VARIATION

of contract referred to in prospectus, restrictions on, 227, 228.
where no prospectus is issued, 251.

VENDORS OF PROPERTY PURCHASED, ETC., BY COMPANY,

definition of, 225.

names, etc., of, to appear in prospectus, 253.

may apply purchase money in payment of legal commission,
258.

VENDORS' SHARES,

amount of, to be stated in prospectus, 253.

may be applied in payment of legal commission, 258.

VOTING,

company may make regulations as to, 23.

in default of regulations as to, each member has one vote,
24.

may be by proxy, if regulations of company permit, 23.

regulations as to, in Table A (revised), 108, 109, 110.

right of, conferred by each class of shares, to be stated in
prospectus, 255.

VOUCHERS OF COMPANY,

auditors to have right of access to, 270.

W.**WAGES OF SERVANT OF COMPANY,**

to be a prior debt in winding up, Appendix.

WAIVER OF REQUIREMENTS

as to allotment, condition requiring, to be void, 229.

as to prospectus, condition requiring, to be void, 226.

WARRANT FOR SHARES,

bearer of, entitled to shares specified therein, 153.

and may transfer them by delivery, 153.

WARRANT FOR SHARES, bearer of (*continued*),
 may be registered as member on giving up warrant,
 154.
 not to be thereby qualified as director, etc., 154.
 fraudulent personation of, to be felony, 155.
 forgery of, to be felony, 155, 156.
 particulars as to, to be stated in annual summary, 155.
 stamp on, 155.
 provisions as to, in Table A (revised), 102, 103, 120.

WINDING UP OF COMPANY,

liability of past members to contribute to, 17.
 of directors, where liability is unlimited, 144.
 courts having jurisdiction in, 178.
 conduct of business of, in High Court, 179.
 transfer of proceedings in, from one court to another, 179.
 by court, in what circumstances, 34, 276.
 application for, who may make, 36, 276.
 commencement of, to be presentation of petition, 37.
 statement of company's affairs within fourteen days
 of order for, 182, 183.
 report on, of official receiver, 183.
 proceedings consequent on such report, 184.
 wishes of creditors and contributories to be considered
 in, 38, 61.
 liquidators to be appointed for conduct of, 39, 180.
 powers of liquidators in, 40, 41, 194, 195.
 ordinary powers of court in, 42-46.
 extraordinary powers of court in, 47, 48.
 costs of, 17, 43, 46, 276.
 appeals from order made by court in, 50.
 voluntary, in what circumstances, 54.
 effect of, on status of company, 55.
 consequences of, 55, 56.
 commencement of, to be passing of resolution for, 54.
 notice of resolution for, to be advertised, 55.
 liquidators to be appointed for, 55.
 to file notice of appointment within twenty-one days,
 274.
 to notify creditors within seven days of first meeting of
 creditors, 274.
 to advertise appointment, 275.
 power to apply to court for directions in, 58, 286.
 creditor or official receiver may have winding up by
 court substituted for, 60, 190.
 creditors may apply to court to appoint a different
 or additional liquidator, 275.
 or a committee of inspection, 275.
 proceedings in, may be adopted by court, 60.

- WINDING UP OF COMPANY, voluntary (*continued*),**
 court may order continuance of, subject to its supervision, 60.
 final meeting to be held on conclusion of, 142.
 return of holding of such meeting to be made to registrar within one week, 60, 290.
 dissolution of company to date from three months after registration of return, 60.
 power to defer or annul dissolution, 277.
 under supervision of court, 60, 61, 62.
 priority of payment of certain debts in, Appendix.
 commencement of, for this purpose, 276.
 power to make compromises with creditors in, 64, 159.
 with members in, 159, 236.
 with debtors or contributories in, 65.
 claims of all kinds may be proved against company in, 64.
 prosecution of delinquent directors, etc., in, 69.
 when registered but not formed under Companies Acts, 82, 83, 84.
 when unregistered, provisions as to, 85-89.
- WITNESS,**
 court in winding up may summon persons before it as, 46.
 County Court judges may examine in winding up, 52.
- WORKMAN OF COMPANY BEING WOUND UP,**
 wages due to, to be preferential debt, Appendix.
 compensation for accident to, to be preferential, Appendix.
- WORKS,**
 construction of unprofitable, 258.
 payment of interest out of capital during, 259.
 requires authority of articles, special resolution and Board of Trade, 259.

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JUNE, 1908.

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INDEX.

	PAGE		PAGE
Arbitrage—		Clerks (continued)—	
Deutsch	13	Kennedy (Stockbrokers)	1
Willdey's American Stocks	26	Mercantile Practice (Johnson)	17
Arbitration—		Merchant's	1
London Chamber of	24	School to Office	1
Lynch, H. Foulks	19	Solicitor's	17
Rudall, A. R.	6	Do., Part II.	17
Banking—		Correspondence (Commercial)—	
Anecdotes	10	Martin (Stockbrokers)	7
Banks of the Clearing House	16	Counbe	12
Banks, Bankers and Banking	22	Counting-house—	
Barton's Questions on Banking	10	Cordingley	11
Bibliography (Bank of England)	25	County Court—	
Easton's Banks and Banking	14	County Court Practice Made	
Easton's Work of a Bank	14	Easy	12
English and Foreign (Attfield)	10	Jones	17
Examination Questions, Arith-		Currency and Finance—	
metic and Algebra	20	Aldenharn (Lord)	9
Half-yearly Balance Sheets	10	Barclay (Robert)	10
Howarth's Clearing Houses	16	Clare's Money Market Primer	12
Hutchison's Practice of Banking	16	Cobb	12
Journal of Institute of Bankers	17	Cuthbertson	13
Legal Decisions affecting Bankers	22	Del Mar's History	13
Questions on Banking Practice	23	Del Mar's Science of Money	13
Scottish Banking	17	Gibbs, Hon. H., Bimetallic	
Smith's Banker and Customer	25	Primer	15
Token Money of the Bank of		Indian Coinage and Currency	22
England	22	Poor (H. V.) The Money Ques-	
Bankruptcy—		tion	23
Duckworth's Trustees	9	Dictionaries—	
McEwen (Accounts)	19	Cordingley's Commercial	6
Stewart (Law of)	7	Cordingley's Stock Exchange	
Bills of Exchange—		Terms	12
Kölkenbeck (Stamp Duties on)	17	French Abbreviations	18
Lloyd's Lectures	18	Milford's Mining Terms	21
Smith (Law of Bills, etc.)	6	Directors—	
Watson's Law of Cheques	26	Pulbrook (Liabilities and Duties)	23
Bimetallicism—		Exchanges—	
List of Works	28, 29	Brazilian Exchanges	26
Book-keeping—		Clare	12
Carr (Investors)	7	Goschen	15
Donald's Mining Accounts	13	Norman's Universal Cambist	21
Down to Date (Munro)	21	Norman's Money's Worth	21
Harlow's Examination Questions	15	Tate's Modern Cambist	25
Holah's Double Entry	8	Exchange Tables—	
Merces' Indian Currency	20	American Exchange Rates	9
Jackson's Book-keeping	16	Dollars or Taels and Sterling	14
Johnson's Book-keeping and Ac-		Eastern Currencies	18
counts	17	Garratt (South American)	14
Johnson's Mercantile Practice	17	Lecoffre (French)	18
Seeborn's (Theory)	8	(Austria and Holland)	18
Sheffield (Solicitors)	24	Merces (Indian)	20
Van de Linde	26	Schultz (American)	24
Warner (Stock Exchange)	26	(German)	24
Clerks—		Insurance—	
Commercial Efficiency	14	Bourne's Publications	11
Corn Trade	23	Fire Insurance Principles and	
Counting-house Guide	12	Finance	17
First Years of Office Work	12	Short-Term Table	25

	PAGE		PAGE
Interest Tables—		Law (Various Subjects) (<i>continued</i>)—	
Bosanquet	11	Magistrates' Handbook	14
Crosbie and Law (Product)	12	Marine Insurance	13
Cummins' 2½ per cent.	13	Maritime Law	24
Decimal Interest	25	Master Mariners' Legal Guide	24
Gilbert's Interest and Contango	15	My Lawyer	21
Gumersall	15	Patent Law and Practice (Emery)	14
Ham (Panton) Universal	15	Powers of Attorney and Proxies	19
Indian Interest (Merces)	20	Property Law (Maude)	26
Lewis (Time Tables)	18	Small Holdings Act	4
Oppenheim's Universal	21	Solicitors' Forms (Charles Jones)	5, 17
Rutter	24	Thames River Law	22
Schultz	24	Trade Union Law	6
Wilhelm (Compound)	26	Legal and Useful Handy Books—	
Investors (see also Stock Exchange		List of	6-9
Manuals)—		Maritime Codes—	
Birk's Investment Ledger	10	Germany	10
Investment Profit Tables	27	Holland and Belgium	22
Houses and Land	8	Italy	22
How to Invest Money	8	Spain and Portugal	22
Joint-Stock Companies—		Mining—	
Analysis of Modern Balance Sheet	6	Accounts of G. M. Cos.	13
Chart for Ready Reference	26	Charlton's Information for Gold	
Company Frauds Abolition	24	Mining Investors	11
Companies Acts, 1862-1907	4, 15	Gabbott's How to Invest in Mines	14
Common Company Forms	23	Milford's Dictionary of Mining	
Handy Book on the Law	23	Terms	21
Pulbrook's Responsibilities of		Russell's Mining Manuals	24
Directors	23	Miscellaneous—	
Reid's Companies Acts, 1900 and		Accountant's Audit Record	22
1907	5	Arithmetic and Algebra	20
Revised Table A	24	Author's Guide	27
Secretary's Everyday Guide	5	On Compound Interest and An-	
Simonson's Companies Acts, 1900		nuities	25
and 1907	5, 24	Constable's (A) Duty	19
Simonson's Debentures and De-		Copper, a Century of	11
benture Stock (Law of)	24	Cotton Trade of Great Britain	14
Simonson's Reconstruction and		Dynamics of the Fiscal Question	19
Amalgamation	25	Elgie's Commercial Efficiency	14
Smith's Joint-Stock Companies,		Elgie's Metric Ready-Reckoner	14
1862-1907	6	Elgie's Wages Tables, 55½ hrs.	14
Law (Various Subjects)—		Foreigners and Foreign Corpora-	
Agricultural Holdings' Act, 1906	6	tions (Laws relating to)	4
Charter Parties	13	Gresham, Sir Thomas (Life of)	11
Commercial Law	21	Ham's Customs Year Book	15
Copyright Law	11	Ham's Inland Revenue Year Book	15
Death Duties	10	His Lordship's Whim	26
District and Parish Councils		Kew Gardens (Illustrations)	26
(Lithiby)	18	Lloyds' Brokerage and Discount	
Divorce, Law of	6	Card	18
Evidence in Brief	17	Mirabeau and Gambetta	22
Factors (Law relating to)	10	Police Officers' Guide	5
First Elements of Legal Procedure	10	Public Meetings	26
Food and Drugs	16	Ratepayer's Guide	16
General Average	13	Red Palmcr	26
High Court Practice	22	Russian Commercial Handbook	21
Landlord and Tenant	9	Schedule D of Income Tax	8
Lawyers and their Clients	18	Veld and "Street"	15
Licensing Acts	17	Wilson's Equivalents	26
Licensing Law	19	X Rays in Freemasonry	12

	PAGE		PAGE
Money Market (<i>see</i> Currency and Finance).		Stock Exchange Manuals, etc.—	
Pamphlets	27	Anecdotes	10
Prices—		Contango Tables	15
Mathieson (Stocks)	20	Cordingley's Guides	12
Railways—		Higgins, Leonard, The Put-and-Call	16
American and British Investors .	26	Houston's Canadian Securities .	16
Argentine	17	How to Read the Money Article	13
Investment and Speculation in		Investor's Ledger	20
Home Rails	25	Investors' Tables, Permanent or	
Mathieson's Traffics	19	Redeemable Stocks	16
Poor's Manual (American) . . .	23	Key to the Rules of the Stock	
Railroad Report (Anatomy of a)	27	Exchange	12
Railway Traffic Law	9	Laws and Customs (Melsheimer)	20
Traders and Railways (the		Le Stock Exchange	12
Traders' Case)	6	Options (Castelli)	11
Ready Reckoners (<i>see also</i> Exchange		Poor's American Railroad Manual	23
Tables, Interest, etc.)—		Redeemable Stocks (a Diagram)	10
Buyers and Sellers' (Ferguson) .	8	Registration of Transfers . . .	14
Commission and Brokerage . . .	21	Robinson (Share Tables) . . .	23
Elgie's Metric	14	Rules and Usages (Stutfield) .	25
Elgie's Wages	14	Willdey's American Stocks . .	26
Ingram (Yards)	16	Yield Tables	25
Kilogrammes and Pounds	26	Tables (<i>see</i> Exchange Tables, Interest	
Kinmond's Universal Calculator	17	Tables, Ready Reckoners,	
Redeemable Stocks (Mathieson)	20	and Sinking Fund and Annuity	
Merces (Indian)	20	Tables, etc.).	
Robinson (Share)	23	Telegraph Codes—	
Sinking Fund and Annuity Tables—		Ager's (list of)	29, 30
Booth and Grainger (Diagram) .	10	Miscellaneous (list of) . . .	30, 31
Dougharty's	13	The Premier Code	32
Hughes	16	Trustees—	
Nash's Sinking Fund and Re-		Investment of Trust Funds . . .	7
demption Tables	21	Judicial Trustees Act, 1896 .	17
Speculation (<i>see</i> Investors and		Marrack's Statutory Trust In-	
Stock Exchange).		vestments	19
		Wilson's Legal and Useful Handy	
		Books List	6-9

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